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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. STATE PERSONNEL BOARD

California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board

Date: January 21, 2005
TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S CABINET
SUBJECT: Proposed Amendment and Repeal of Regulations Affecting Psychological Screening of Peace Officer Candidates

AUTHORITY

Under authority established in Government Code (GC) § 18701, the State Personnel Board (SPB) proposes to revise Title 2 of the California Code of Regulations (2CCR) §§ 172.4 through 172.11 to bring standards and procedures for psychological screening into alignment with current professional practice and recent changes made by law. This action proposes the repeal of 2CCR § 172.7.

REFERENCE

This regulation is amended to implement, interpret, and/or make specific GC §§ 1031, subdivisions (f) and (g), 18500, 18670, 18930, 18931, 18935, 19253.5 and 19261, and Penal Code (PC) § 13601(a).

PUBLIC HEARING

Date and Time: March 8, 2005 from 1:00 to 2:00 p.m.
Place: 801 Capitol Mall, Room 150,
Auditorium
Sacramento, California
Purpose: To receive written or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD

The written public comment period will close Monday, March 7, 2005, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of

any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the 45-day comment period.

Written comments may be submitted to Dr. Sherrill Leake at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or to SLeake@spb.ca.gov, or faxed to her attention at (916) 653-5677.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available upon request directed to Elizabeth Montoya. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Dr. Sherrill Leake as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya at the SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or by telephone at (916) 654-0842 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation is permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1(b) of Article VII of the Constitution provides that civil service permanent appointment and promotions shall be made under a general system based on merit ascertained by competitive examination.

GC § 18500 authorizes SPB to facilitate the operation of Article VII of the Constitution in regard to the merit system.

GC § 18670 specifies that SPB conduct hearings and make investigations concerning the selection process.

GC § 18701 authorizes SPB to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.

GC § 18930 requires that examinations for the establishment of lists be competitive and of such a

character to fairly test and determine the qualifications, fitness and ability of competitors to perform the duties of the classification.

GC § 18931 specifies that SPB establish minimum qualifications for determining the fitness and qualifications of employees and applicants for examinations. It also allows SPB to require necessary evidence of fitness.

GC § 18935(c) permits SPB to declare ineligible, or withhold or withdraw from certification, prior to employment, anyone found to be “physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he or she seeks appointment.”

GC § 1031, subdivision (f) (added in 1961, amended in 1972), states that prior to employment, peace officer applicants must “be found to be free from any physical, emotional, or mental condition which might adversely affect the exercise of the powers of a peace officer” and that such a determination must be made by a qualified professional as defined in the code. Subdivision (g) of GC § 1031 permits the adoption of additional or higher standards than those required under this section. In 1998, PC § 13601, subdivision (a) was rewritten to extend the above requirement to include correctional peace officer applicants. It additionally specified that any standard for selection established under PC § 13601, subdivision (a) shall be subject to approval by the Board.

Assembly Bill (AB) 1669 (Chapter 777), introduced in February 2003, proposed an amendment to GC § 1031, subdivision (f), to more specifically define a “qualified professional” who performs mental and emotional fitness evaluations for peace officer applicants or employees. (The definition of a qualified professional who may assess physical fitness was not affected.) In addition, AB 1669 was signed into law in October 2003, with an effective date of January 1, 2005.

2CCR §§ 172.4 through 172.11 codifies the definitions, standards and procedures for pre-employment psychological screening of peace officer applicants. SPB is proposing to amend these sections as follows:

1. Repeal existing 2CCR § 172.7 relating to responsibility for psychological screening.
2. Reorganize, revise, and update terminology to include the new definition of “qualified professional” and align standards and procedures with actual practice and the current “state of the art” in the speciality area of psychological screening. These amendments will require the renumbering of certain sections.
3. Add references to GC§ 1031, subdivision (g) and PC § 13601, subdivision (a).

IMPACT ON SMALL BUSINESSES

No impact on small businesses is anticipated from the implementation of the proposed amendment. Implementing the proposed amendment will affect only State departments and current and prospective employees of State departments.

LOCAL MANDATE

SPB has determined that the proposed action imposes no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to GC § 17561.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies:

The proposed regulation will involve no additional costs or savings to any State agency.

Impact on Housing Costs:

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses:

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination, creation, or expansion of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES STATEMENT

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons for the proposed action may be obtained from the contact person or backup contact person when it becomes available.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons, and if prepared and when available for review, the Final Statement of Reasons, will be on SPB's website at: www.spb.ca.gov.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Schools Exempted from Textbook Sufficiency Reviews Based on Monitoring through the Immediate Intervention/Underperforming Schools Program (II/USP) and High Priority Schools Grant Program (HPSGP)

Instructional Materials Funding Realignment Program: Expenditure Policy Percentages and 24 Month Purchasing Requirement *Williams* vs. *State of California* Lawsuit Settlement

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education staff, on behalf of the State Board of Education, will hold a public hearing beginning at **9:00 a.m. on March 7, 2005**, at 1430 N Street, Room 2102, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on March 7, 2005**. The State Board will

consider only written comments received by the Regulations Coordinator or at the State Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, CA 95814
E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Section 33031 and 60005, Education Code.

References: Sections 1240, 52055.5, 52055.51, 52055.640, 52055.650, 60119, 60200, 60242, 60242.5, 60040–60045, 60048, 60400, 60421, 60422, and 60605, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Education Code sections 52055.5 and 52055.650 provide for a general standard by which schools participating in the II/USP and HPSGP, respectively, may be subject to state monitoring. *Education Code* Section 1240(i)(3) provides that a County Superintendent of Schools must ensure that decile 1 to 3 schools, not currently under review by a state intervention program, have available and use state textbooks and instructional materials and high schools textbooks and instructional materials. This provision, however, does not define the phrase "under review". Therefore, the proposed regulation provides a definition for the phrase "under review" to clarify which decile 1 to 3 schools are not subject to review by a county superintendent of schools. The proposed regulation specifies a clear standard to determine whether a school is exempt from the textbook use and sufficiency review.

Education Code Section 60119 has been amended requiring a determination on the sufficiency of textbooks and/or instructional materials in the subjects of reading/language arts, mathematics, science and history-social science and to rectify any insufficiency within two months of the beginning of the school year. *Education Code* Section 60451 requiring standards maps for instructional materials in grade 9 to 12 was repealed on January 1, 2004. The proposed regulation includes revisions to be consistent with the current *Education Code* provisions regarding instructional materials and the *Williams* v. *State of California* settlement.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts:
None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because the regulations only relate to local school districts and not to business practices.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Susan Martimo, Education Program Consultant
California Department of Education
Curriculum Frameworks and Instructional
Resources Division
1430 N Street, Suite 3207
Sacramento, CA 95814

Telephone: (916) 319-0446

E-mail: smartimo@cde.ca.gov

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Natalie Vice, at (916) 319-0860.

**AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATIONS**

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above.

The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at

<http://www.cde.ca.gov/re/lr/rr/>.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Carlos Rivera, School Improvement Division, 1430 N Street, Suite 4401, Sacramento, CA, 95814; telephone, (916) 319-0492; fax, (916) 319-0126. It is recommended that assistance be requested at least two weeks prior to the hearing.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

Workers' Compensation—Independent Medical Review

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code sections 133 and 4616, has adopted regulations on an emergency basis to implement the provisions of Labor Code section 4616.4, as implemented by Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). The regulations are mandated by Labor Code section 4616(g), which provides that on or before November 1, 2004 the Administrative Director "shall adopt regulations implementing this article" so that "on or after January 1, 2005, an insurer or employer may establish or modify a medical provide network."

The regulations adopted constitute Article 3.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9768.1 through 9768.17. The regulations govern independent medical reviews. The regulations implement, interpret, and make specific section 4616.4 of the Labor Code.

The emergency regulations listed below became effective on January 1, 2005, and will remain in effect for a period of 120 days from January 1, 2004. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt Article 3.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, commencing with Section 9768.1:

- Section 9768.1 Definitions
- Section 9768.2 Conflicts of Interest

- Section 9768.3 Qualifications of Independent Medical Reviewers
- Section 9768.4 IMR Contract Application Procedures
- Section 9768.5 Physician Contract Application Form
- Section 9768.6 Administrative Director's Action on Contract Application Submitted by Physician
- Section 9768.7 IMR Request to Be Placed on Voluntary Inactive Status
- Section 9768.8 Removal of Physicians from Independent Medical Reviewer List
- Section 9768.9 Procedure for Requesting an Independent Medical Review
- Section 9768.10 Independent Medical Review Application (Form)
- Section 9768.11 In-Person Examination or Record Review IMR Procedure
- Section 9768.12 Contents of Independent Medical Review Reports
- Section 9768.13 Destruction of Records by the Administrative Director
- Section 9768.14 Retention of Records by Independent Medical Reviewer
- Section 9768.15 Charges for Independent Medical Reviewers
- Section 9768.16 Adoption of Decision
- Section 9768.17 Treatment Outside the Medical Provider Network

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: March 16, 2005

Time: 10:00 a.m.

Place: Auditorium

**The Governor Hiram Johnson
State Office Building
455 Golden Gate Avenue
San Francisco, California 94102**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California

Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 133 and 4616; and Government Code section 11400.20.

Reference is to Labor Code sections 4616.3, 4616.4, 5300(f), and 5307.27; and Government Code sections 11415.10, 11503, and 11522.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These regulations are required by a legislative enactment—Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included Labor Code sections 4616 through 4616.7, which provide for the establishment of medical provider networks. Labor Code section 4616.4 specifically authorizes the Administrative Director to contract with an independent medical review organization or individual physicians to perform independent medical reviews.

Labor Code section 4616 provides that on or after January 1, 2005, an insurer or employer may establish or modify a medical provider network for the provision of medical treatment to injured employees. Labor Code section 4616(g) provides that on or before November 1, 2004, the Administrative Director, in consultation with the Department of Managed Health Care, shall adopt regulations implementing this article. The Administrative Director shall develop regulations that establish procedures for purposes of making medical provider network modifications.

Labor Code section 4616.3 provides that when the injured employee notifies the employer of the injury or files a claim for workers' compensation with the employer, the employer shall arrange an initial medical evaluation and begin treatment. The employer shall notify the employee of his or her right to be treated by a physician of his or her choice after the first visit from within the medical provider network, and the method by which the list of participating providers may be accessed by the employee. This section also

provides that if an injured employee disputes the diagnosis, diagnostic service or medical treatment prescribed by the treating physician, the employee may seek the opinion of another physician in the medical provider network. If the injured employee disputes the diagnosis or treatment prescribed by the second physician, the employee may seek the opinion of a third physician in the medical provider network.

Labor Code section 4616.4 authorizes the Administrative Director to contract with individual physicians to act as independent medical reviewers. If, after the third physician's opinion, the diagnosis, diagnostic service or medical treatment remains disputed, the injured employee may request an independent medical review.

Pursuant to the requirement of Labor Code section 4616(g), the Administrative Director has consulted with the Department of Managed Health Care regarding these proposed regulations.

The described regulations were adopted as emergency regulations, effective January 1, 2005. This rulemaking would make the regulations permanent. These proposed regulations implement, interpret, and make specific section 4616.4 of the Labor Code as follows:

1. Section 9768.1 Definitions.

This section provides definitions for the following key terms: "American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines," "Appropriate specialty," "In-person examination," "Independent medical reviewer," "Material familial affiliation," "Material financial affiliation," "Material professional affiliation," "Medical emergency," "Medical Provider Network Contact," and "Residence." The definitions are provided to ensure that their meaning, as used in the regulations, will be clear to the regulated public.

2. Section 9768.2 Conflicts of Interest

This section sets forth the prohibited conflicts of interest for an independent medical reviewer. Specifically, the IMR shall not have any material, professional, familial, or financial affiliation with any of the following: (1) the injured employee's employer or employer's workers' compensation insurer; (2) any officer, director, management employee, or attorney of the injured employee's medical provider network, employer or employer's workers' compensation insurer; (3) any treating health care provider proposing the service or treatment; (4) the institution at which the service or treatment would be provided, if known; (5) the development or manufacture of the principal drug, device, procedure, or other therapy proposed for the injured employee whose treatment is under review; or (6) the injured employee, the injured employee's immediate family, or the injured employee's attorney.

Additionally, the IMR shall not have a contractual agreement to provide physician services for the injured employee's MPN if the IMR is within a 35 mile radius of the treating physician, and the IMR shall not have previously treated or examined the injured employee.

3. Section 9768.3 Qualifications of Independent Medical Reviewers

This section sets forth the required qualifications to be on the Administrative Director's list of independent medical reviewers. The physician must file a Physician Contract Application pursuant to section 9768.5 and demonstrate that the physician (1) is board certified; (2) has an unrestricted license as a physician in California under the appropriate licensing Board; (3) is not currently under accusation for a quality of care violation, fraud related to medical practice or felony conviction or conviction of a crime related to the conduct of his or her practice of medicine by any governmental licensing agency (*the word "physician" was stricken from this subsection*); (4) has not been terminated or had discipline imposed by the Industrial Medical Council or Administrative Director in relation to the physician's role as a Qualified Medical Evaluator; is not currently under accusation by the Industrial Medical Council or Administrative Director; has not been denied renewal of Qualified Medical Evaluator status, except for non-completion of continuing education or for non-payment of fees; has neither resigned nor failed to renew Qualified Medical Evaluator status while under accusation or probation by the Industrial Medical Council or Administrative Director or after notification that reappointment as a Qualified Medical Evaluator may or would be denied for reasons other than non-completion of continuing education or non-payment of fees; and has not filed any applications or forms with the Industrial Medical Council or Administrative Director which contained any untrue material statements; (5) has not been convicted of a felony crime or a crime related to the conduct of his or her practice of medicine; and (6) has no history of disciplinary action or sanction, including but not limited to, loss of staff privileges or participation restrictions taken or pending by any hospital, government or regulatory body.

4. Section 9768.4 IMR Contract Application Procedures

This section informs the physician seeking to serve as an independent medical reviewer how to apply to the Administrative Director. In addition to submitting the Physician Contract Application set forth in section 9768.5, the physician must furnish a certified copy of his or her board certification, a copy of his or her current license to practice medicine, and submit other documentation of his or her qualifications as the Administrative Director may require; designate spe-

cialties based on each of his or her board certifications; designate the address(es) of the physician's office with necessary medical equipment where in-person examinations will be held; agree to see any injured worker assigned to him or her within 30 days unless there is a conflict of interest as defined in section 9768.2. The section also requires the physician to keep the Administrative Director informed of any change of address, telephone, email address or fax number, and of any disciplinary action taken by a licensing board.

The section provides that the Administrative Director shall maintain a list of physicians who have applied, and whom the Administrative Director has contracted with to conduct independent medical reviews under Labor Code section 4616.3. The IMR contract term is two years and a physician may apply to serve for subsequent two year terms.

5. Section 9768.5 Physician Contract Application Form

This section provides the mandatory contract application form. In order to be selected to serve as an independent medical reviewer, a physician must complete the contract application, providing the required information regarding his or her qualifications, listing entities with whom a conflict exists, and agreeing to comply with the requirements set forth in these regulations. The contract application is not accepted by the Administrative Director until it is signed by the Administrative Director. *The specialty code for psychology was removed from the contract application because Labor Code section 4616.4(a)(4)(B) requires that physicians hold a current certificate by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. As the Board of Psychology does not recognize specialty boards, the Labor Code does not authorize the selection of psychologists.*

6. Section 9768.6 Administrative Director's Action on Contract Application Submitted by Physician

This section provides that, if after reviewing a completed contract application, the Administrative Director finds that the physician meets the qualifications, the Administrative Director shall accept the physician's contract application to be an independent medical reviewer by executing the contract, notify the physician by mail, and add the physician's name to the list of independent medical reviewers. The contract term shall be for a two-year term beginning with the date of acceptance by the Administrative Director.

If the Administrative Director determines that a physician does not meet the qualifications, he/she shall notify the physician by mail that the physician's

contract application is not accepted and the reason for the rejection. A physician whose contract application has not been accepted may reapply.

If the Administrative Director denies a physician's contract application following at least two subsequent submissions, the physician may seek further review of the Administrative Director's decision by filing an appeal with the Workers' Compensation Appeals Board, and serving a copy on the Administrative Director, within twenty days after receipt of the denial.

7. Section 9768.7 IMR Request to be Placed on Voluntary Inactive Status

This section provides that a physician may request to be placed on the inactive list during the IMR contract term. The physician shall submit the request to the Administrative Director and specify the time period that he or she is requesting to be on voluntary inactive status. The two-year contract term is not extended due to a physician's request to be on voluntary inactive status.

8. Section 9768.8 Removal of Physicians from Independent Medical Reviewer List

This section provides that the Administrative Director may cancel the IMR contract and remove a physician from the independent medical reviewer list if the Administrative Director determines that: (1) the physician has not issued the independent medical review report in a case within the time limits prescribed in the regulations on more than one occasion; or (2) the physician has not met the reporting requirements on more than one occasion; or (3) the physician has at any time failed to disclose to the Administrative Director that the physician had a conflict of interest pursuant to section 9768.2; or (4) the physician has failed to schedule appointments within the time frame required by these regulations on more than one occasion.

Additionally, the Administrative Director shall cancel the IMR contract and remove a physician from the independent medical reviewer list if the Administrative Director determines that: (1) the physician no longer meets the qualifications to be on the list; or (2) the physician's contract application to be on the list contained material statements which were not true.

The section also provides that the Administrative Director shall place a physician on an inactive list up to the end of the two year contract term whenever the Administrative Director determines that the appropriate licensing Board from whom the physician is licensed has filed an accusation for a quality of care violation, fraud related to medical practice, or conviction of a felony crime or crime related to the conduct of his or her practice of medicine against the physician or taken other action restricting the physician's medical license. If the accusation or action is

later withdrawn, dismissed or determined to be without merit during the two year contract term, the physician shall advise the Administrative Director who will then remove the physician's name from the inactive list. If the accusation or action is withdrawn, dismissed or determined to be without merit after the expiration of the two year contract term, the physician may reapply pursuant to section 9768.4.

Upon removal of a physician from the independent medical reviewer list, the Administrative Director shall advise the physician by mail of the removal or placement on the inactive list, the Administrative Director's reasons for such action, and the right to request a hearing on the removal from the IMR list or placement on the inactive list.

A physician who has been mailed a notice of removal from the list or placement on the inactive list, may, within 30 calendar days of the mailing of the notice, request a hearing by filing a written request for hearing with the Administrative Director. If a written request for hearing is not received by the Administrative Director within 30 calendar days of the mailing of the notice, the physician shall be deemed to have waived any appeal or request for hearing.

Upon receipt of a written request for hearing, the Administrative Director shall prepare an accusation and serve the physician with the accusation, as provided in Government Code section 11503. Hearings shall be held under the procedures of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11500) and the regulations of the Office of Administrative Hearings (Title 1, California Code of Regulations, section 1000 et seq.). Failure to timely file a notice of defense or failure to appear at a noticed hearing or conference shall constitute a waiver of a right to a hearing.

A physician who has been removed from the list may petition for reinstatement after one year has elapsed since the effective date of the Administrative Director's decision on the physician's removal. The provisions of Government Code section 11522 shall apply to such petition.

The specialty code for psychology was removed from the application because Labor Code section 4616.4(a)(4)(B) requires that physicians hold a current certificate by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. As the Board of Psychology does not recognize specialty boards, the Labor Code does not authorize the selection of psychologists.

9. Section 9768.9 Procedure for Requesting an Independent Medical Review

This section provides the procedure for a covered employee to request an independent medical review. At the time of the selection of the physician for a third

opinion, the MPN Contact shall notify the covered employee about the independent medical review process and provide the covered employee with an "Independent Medical Review Application" form set forth in section 9768.10. The MPN Contact shall fill out the "MPN Contact section" of the form and send the form to the covered injured employee.

If a covered employee disputes the diagnostic service, diagnosis or medical treatment prescribed by the third opinion physician, the covered employee may request an Independent Medical Review by filing the completed Independent Medical Review Application form with the Administrative Director. The covered employee shall complete the "employee section" of the form, indicate on the form whether he or she requests an in-person examination or records review, and may list an alternative specialty, if any, that is different from the specialty of the treating physician.

The Administrative Director shall select an IMR with an appropriate specialty within ten business days of receiving the Independent Medical Review Application form. The Administrative Director's selection of the IMR shall be based on the specialty of the treating physician, the alternative specialties listed by the covered employee and the MPN Contact, and the information submitted with the Independent Medical Review Application.

If the covered employee requests an in-person examination, the Administrative Director shall randomly select a physician from the list of available independent medical reviewers, with an appropriate specialty, who has an office located within thirty miles of the employee's residence address, to be the independent medical reviewer. If there is only one physician with an appropriate specialty within thirty miles of the employee's residence address, that physician shall be selected to be the independent medical reviewer. If there are no physicians with an appropriate specialty who have offices located within thirty miles of the employee's residence address, the Administrative Director shall search in increasing five mile increments, until one physician is located. If there are no available physicians with this appropriate specialty, the Administrative Director may choose another specialty based on the information submitted.

If the covered employee requests a record review, then the Administrative Director shall randomly select a physician with an appropriate specialty from the list of available independent medical reviewers to be the IMR. If there are no physicians with an appropriate specialty, the Administrative Director may choose another specialty based on the information submitted.

The Administrative Director shall send written notification of the name and contact information of the IMR to the covered employee, the employee's attorney, if any, the MPN Contact and the IMR. The

Administrative Director shall send a copy of the completed Independent Medical Review Application to the IMR.

The covered employee, MPN Contact, or the selected IMR can object within ten calendar days from receipt of the name of the IMR to the selection if there is a conflict of interest as defined by section 9768.2. If the IMR determines that he or she does not practice the appropriate specialty, the IMR shall withdraw within 10 calendar days of receipt of the notification of selection. If this conflict is verified or the IMR withdraws, the Administrative Director shall select another IMR from the same specialty. If there are no available physicians with the same specialty, the Administrative Director may select an IMR with another specialty based on the information submitted.

If the covered employee requests an in-person exam, within 60 calendar days of receiving the name of the IMR, the covered employee shall contact the IMR to arrange an appointment. If the covered employee fails to contact the IMR for an appointment within 60 calendar days of receiving the name of the IMR, then the employee shall be deemed to have waived the IMR process with regard to this disputed diagnosis or treatment of this treating physician. The IMR shall schedule an appointment with the covered employee within 30 calendar days of the request for an appointment, unless all parties agree to a later date. The IMR shall notify the MPN Contact of the appointment date.

The covered employee shall provide written notice to the Administrative Director and the MPN Contact if the covered employee decides to withdraw the request for an independent medical review.

During this process, the employee is required to continue his or her treatment with the treating physician or a physician of his or her choice within the MPN pursuant to section 9767.6.

Throughout this section, the name of the "Application for Independent Medical Review" form has been changed to "Independent Medical Review Application" to comply with Labor Code section 4616.4(c).

A typographical correction was made to subsection (g).

10. Section 9768.10 Independent Medical Review Application (Form)

This is the mandatory Independent Medical Review Application form that must be filled out by the injured employee and MPN Contact. The form must be sent to the Administrative Director. The form instructions are on the reverse side of the form. *The name of the form has been changed from "Application for Independent Medical Review" to "Independent Medical Review Application" to comply with Labor Code section 4616.4(c).*

11. Section 9768.11 In-Person Examination or Record Review IMR Procedure

This section sets forth the procedure for an in-person IMR examination and IMR record review. The MPN Contact shall send all relevant medical records, including x-ray, MRI, CT, and other diagnostic studies, the treating physician's report, with the disputed treatment or diagnosis, the second and third opinion physicians' reports, and any other medical reports which address the disputed diagnostic services, diagnosis or medical treatment to the IMR. The MPN Contact shall furnish a copy of all correspondence from, and received by, any treating physician who provided a treatment or diagnostic service to the covered employee in connection to the injury. The MPN Contact shall also send a copy of the documents to the covered employee. The employee may furnish any relevant medical records to the independent medical reviewer, with a copy to the MPN contact. If an in-person examination is requested and if a special form of transportation is required because of the employee's medical condition, it is the obligation of the MPN Contact to arrange for it. The MPN Contact shall furnish transportation and arrange for an interpreter, if necessary, in advance of the in-person examination. All reasonable expenses of transportation shall be incurred by the insurer or employer pursuant to Labor Code section 4600. Except for the in-person examination itself, the independent medical reviewer shall have no ex parte contact with any party. Except for matters dealing with scheduling appointments, scheduling medical tests and obtaining medical records, all communications between the independent medical reviewer and any party shall be in writing, with copies served on all parties.

If the IMR requires further tests, the IMR shall notify the MPN Contact within one working day of the appointment. All tests shall be consistent with the medical treatment utilization schedule adopted pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines, and for all injuries not covered by the medical treatment utilization schedule or the ACOEM guidelines, in accordance with other evidence based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.

The IMR may order any diagnostic tests necessary to make his or her determination regarding medical treatment or diagnostic services for the injury or illness but shall not request the employee to submit to an unnecessary exam or procedure. If a test duplicates a test already given, the IMR shall provide justification for the duplicative test in his or her report.

If the employee fails to attend an examination with the IMR and fails to reschedule the appointment within five business days of the missed appointment,

the IMR shall perform a review of the records and make a determination based on those records.

The IMR shall serve the report on the Administrative Director, the MPN Contact, the employee and the employee's attorney, if any, within 20 days after the in-person examination or completion of the record review.

If the disputed health care service has not been provided and the IMR certifies in writing that an imminent and serious threat to the health of the injured employee exists, including, but not limited to, the potential loss of life, limb, or bodily function, or the immediate and serious deterioration of the injured employee, the report shall be expedited and rendered within three business days of the in-person examination by the IMR.

Subject to approval by the Administrative Director, reviews not covered by the above paragraph may be extended for up to three business days in extraordinary circumstances or for good cause.

Extensions for good cause shall be granted for: (1) Medical emergencies of the IMR or the IMR's family; (2) Death in the IMR's family; or (3) Natural disasters or other community catastrophes that interrupt the operation of the IMR's office operations.

Utilizing the medical treatment utilization schedule established pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines, and taking into account any reports and information provided, the IMR shall determine whether the disputed health care service is consistent with the recommended standards. For injuries not covered by the medical treatment utilization schedule or by the ACOEM guidelines, the treatment rendered shall be in accordance with other evidence-based medical treatment guidelines which are generally recognized by the national medical community and scientifically based.

The independent medical reviewer shall not treat or offer to provide medical treatment for that injury or illness for which he or she has done an IMR evaluation for the employee unless a medical emergency arises during the in-person examination.

Neither the employee nor the employer nor the insurer shall have any liability for payment for the independent medical review which was not completed within the required timeframes unless the employee and the employer each waive the right to a new independent medical review and elect to accept the original evaluation.

A typographical correction was made to subsection (e).

12. Section 9768.12 Contents Of Independent Medical Review Reports

This section sets forth the required contents of an independent medical review report. Reports of independent medical reviewers shall include: (1) The date of the in-person examination or record review; (2) The patient's complaint(s); (3) A listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion; (4) The patient's medical history relevant to the treatment or diagnosis determination; (5) Findings on record review or in-person examination; (6) The IMR's diagnosis; (7) The physician's opinion whether or not the proposed treatment or diagnostic services are appropriate and indicated. If the proposed treatment or diagnostic services are not appropriate or indicated, any alternative diagnosis or treatment recommendation consistent with the medical treatment utilization schedule shall be included; (8) An analysis and determination whether the disputed health care service is consistent with the medical treatment utilization schedule established pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines. For injuries not covered by the medical treatment utilization schedule or by the ACOEM guidelines, an analysis and determination whether the treatment rendered is in accordance with other evidence-based medical treatment guidelines which are generally recognized by the national medical community and scientifically based; and (9) The signature of the physician.

The report shall be in writing and use layperson's terms to the maximum extent possible. An independent medical reviewer shall serve with each report an executed declaration made under penalty of perjury.

13. Section 9768.13 Destruction of Records by the Administrative Director

This section provides that the Administrative Director may destroy any forms or documents submitted to the Administrative Director as part of the IMR process two years after the date of receipt.

14. Section 9768.14 Retention of Records by Independent Medical Reviewer

This section provides that each independent medical reviewer shall retain all comprehensive medical reports completed by the independent medical reviewer for a period of five years from the date of the IMR report.

15. Section 9768.14 Charges for Independent Medical Reviewers

This section provides that payment for the services of the independent medical reviewers shall be made by the employer or insurer. The fee shall be based on the Official Medical Fee Schedule using confirmatory

consultation codes (99271 through 99275 for in-person examination or 99271 through 99273 for evaluations not requiring an in-person examination), 99080 for reports, and 99358 for record reviews, and any other appropriate codes or modifiers. *This language was modified in order to clarify the appropriate use of the codes.* This section also provides that an IMR shall not accept any additional compensation from any source for his or her services as an IMR except for services provided to treat a medical emergency that arose during an in-person examination pursuant to section 9768.11(j).

16. Section 9768.16 Adoption of Decision

This section provides that the Administrative Director shall immediately adopt the determination of the independent medical reviewer and issue a written decision within 5 business days of receipt of the report. Additionally, the parties may appeal the Administrative Director's written decision by filing a petition with the Workers' Compensation Appeals Board and serving a copy on the Administrative Director, within twenty days after receipt of the decision.

17. Section 9768.17 Treatment Outside the Medical Provider Network

This section provides that if the IMR agrees with the diagnosis, diagnostic service, or medical treatment prescribed by the treating physician, the covered employee shall continue to receive medical treatment from physicians within the MPN.

If the IMR does not agree with the disputed diagnosis, diagnostic service, or medical treatment prescribed by the treating physician, the covered employee shall seek medical treatment with a physician of his or her choice either within or outside the MPN. If the employee chooses to receive medical treatment with a physician outside the MPN, the treatment is limited to the treatment recommended by the IMR or the diagnostic service recommended by the IMR.

The medical treatment shall be consistent with the medical treatment utilization schedule established pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines. For injuries not covered by the medical treatment utilization schedule or by the ACOEM guidelines, the treatment rendered shall be in accordance with other evidence-based medical treatment guidelines which are generally recognized by the national medical community and scientifically based.

The employer or insurer shall be liable for the cost of any approved medical treatment in accordance with Labor Code section 5307.1 or 5307.11.

References which were inadvertently omitted from the emergency regulations have been added to this section.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. These representative private persons or directly affected businesses are insurance companies or self-insured employers. These regulations provide for an independent medical review process for employees covered by a MPN. It is anticipated that there will be very few requests for an IMR.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: The costs to the Division of Workers' Compensation due to processing the physician contract applications and selecting the IMRs was included in the Medical Provider Network rulemaking.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on

local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.

- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed regulation does not apply to any local agency or school district. (See "Local Mandate" section above.)

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulation will not affect small businesses. The regulations apply to insurance companies and self-insured employers, which are not considered small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATION

Public discussion pursuant to Government Code section 11346.45 is not required prior to implementation of the proposed regulations because the issue addressed is not so complex that it cannot easily be reviewed during the comment period. The Administrative Director, however, prior to the emergency adoption of the regulations, held several stakeholder meetings to which the public was invited, at which proposed regulations were discussed, and at which a representative group of interested parties was present.

In addition, the text of the proposed regulations was made available for two pre-adoption public comment periods through the Division's Internet message board (the DWC Forum).

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

In addition, this Notice, the Initial Statement of Reasons, and the text of regulations may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov under the heading "Rulemaking-proposed regulations." Any subsequent changes in regulation text, and the Final Statement of Reasons will be available at that Internet site when made.

PRESENTATION OF ORAL AND/OR WRITTEN
COMMENTS AND DEADLINE FOR
SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulation, prior to the public hearing to:

Ms. Kathleen Llemos
Division of Workers' Compensation—9th Floor
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on **March 16, 2005**. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY
E-MAIL OR FACSIMILE

Due to the inherent risks of non-delivery by facsimile transmission and email transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission or email transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF RULEMAKING FILE
AND LOCATION WHERE RULEMAKING
FILE MAY BE INSPECTED

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

AVAILABILITY OF RULEMAKING
DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the "Medical Provider Network" rulemaking link.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Kathleen Llemos
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT
PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: Destie Lee Overpeck, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES
FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulation as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for

public comment for at least 15 days prior to the date on which the regulation is adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted on a permanent basis, the proposed regulation will remain in effect at Title 8, California Code of Regulations, sections 9768.1 through 9768.17.

TITLE 10. BUSINESS, TRANSPORTATION AND HOUSING AGENCY

Emergency Small Business and Farm Enterprise Guarantees and Small Business Loans and Guarantees Title 10, Chapters 6.51 and 7

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the California Business, Transportation and Housing Agency proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Agency proposes to amend the following sections of Title 10 of the California Code of Regulations in order to implement, interpret and make specific Division 3, Part 5, Chapter 1 of the Corporations Code, relating to Small Business Loan Guarantees: 4010, 4011, 4013, 4014, 4016, 4017, 4018, 4019, 5000, 5001, 5002, 5003, 5005, 5006, 5007, 5008, 5009, 5010, 5013, 5020, 5050, 5051, 5060, 5061, 5070, 5101, 5110, 5111, 5112, 5113, 5114, 5115, 5116, 5117, 5118, 5119, 5250, 5251, 5252, 5253, 5254, 5255, 5256, 5257, 5258, 5260, 5261, 5262, 5263, 5264, 5266, 5267, 5268, 5269, and 5270.

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency. Written comments will be accepted by the Agency until **5:00 p.m. on March 7, 2005**. Submit comments to:

Glenn Stober
California Business, Transportation and
Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814
Fax: (916) 323-5440
E-Mail: gstober@bth.ca.gov

AUTHORITY AND REFERENCE

The proposed regulation has been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Division 3, Part 5, Chapter 1 of the Corporations Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of the proposed revision is to:

- 1) Establish the regulations under the Business, Transportation and Housing Agency, and correct technical flaws.
- 2) Increase access to capital for small businesses by:
 - a. Modifying the terms and conditions of the bond and lines of credit guarantees issued by Corporations on behalf of small businesses. The proposed changes increase the bond guarantee limit to \$500,000 from any single trust fund; increase the number of days of the expiration date of the guarantee and conditions; add a maximum guarantee amount from a combination of trust funds for any one business to \$1 million pursuant to certain provisions; and increase the reporting time period for bond guarantee claim procedures.
 - b. Allowing the Agency to accept security for federally guaranteed direct farm loans that are in the form of revolving lines of credit. Under current regulation, the Agency can accept security only for a non-guaranteed farm loan. For a guaranteed farm loan, the guarantee must either be assigned to the Agency or sold to a third party. Under federal regulations, guarantees for revolving lines of credit cannot be assigned or sold, so the state currently cannot utilize revolving lines in its farm loan program. Proposed regulatory language will allow the Agency to accept security for loans with non-assignable guarantees through the filing of

a UCC statement, thus ensuring that this type of financing is available to meet the needs of small farmers in California.

- 3) Ensure that statutory authority for making loan guarantees to businesses impacted by a declared disaster is adhered to by clarifying that loan proceeds are not to be used to bring the borrower's economic circumstances to a condition better than before the disaster occurred; that the maximum guarantee amount per borrower, per disaster is \$500,000; that the FDC's board of directors must adopt a resolution attesting to the borrower's eligibility for disaster assistance; and stipulating the types of guarantees each borrower is eligible to receive.

DISCLOSURES REGARDING THE PROPOSED ACTION

The California Business, Transportation and Housing Agency has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Potential cost impact on private persons or directly affected businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing: None.
- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulatory changes will make California businesses more competitive by enhancing their ability to acquire financing and performance bonds.
- The adoption of these regulatory changes will not result in the elimination of jobs or businesses in California. By enhancing access to capital, the changes will: 1) facilitate the creation of jobs within California; 2) will facilitate the creation of businesses within California; and, 3) will facilitate the expansion of businesses currently doing businesses within California.
- The proposed regulatory changes will not result in the elimination of small businesses in California,

but will affect small businesses positively by improving their ability to obtain business capital and performance bonds.

EFFECT ON SMALL BUSINESS

The California Business, Transportation and Housing Agency has determined that the proposed regulation will impact small businesses.

ALTERNATIVES CONSIDERED

The California Business, Transportation and Housing Agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose of the proposed action, or be as effective and less burdensome to affected private person than the proposed regulations. The Agency invites interested persons to present statements or arguments concerning alternatives to the proposed regulation during the public comment period.

CONTACT PERSON

Inquiries and questions regarding the substance of the proposed regulations, or requests for copies of the proposed text, the initial statement of reasons, the modified text of the regulations, or any other rulemaking documents, should be submitted or directed to:

Glenn Stober
California Business, Transportation and
Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814
Phone: (916) 445-6733
Fax: (916) 323-5440
E-Mail: gstoer@bth.ca.gov

The following person is designated as a backup contact person for inquiries regarding the proposed regulation:

Karen Kawada
California Business, Transportation and
Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814
Phone: (916) 323-5825
Fax: (916) 323-5440
E-Mail: kkawada@bth.ca.gov

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day public comment period, the Agency may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Agency regarding this proposal, the Agency may determine that changes to the proposed regulation are appropriate. If the

Agency makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Agency adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Glenn Stober at the above address. The Agency will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED REGULATIONS

The Agency has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Agency's office at 980 9th Street, Suite 2450, Sacramento, California 95814, during normal business working hours. Please contact Glenn Stober at the above address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Agency is required to prepare a Final Statement of Reasons. Once the Agency has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Agency Contact Person identified in this Notice.

AGENCY INTERNET WEBSITE

The Agency maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://commerce.ca.gov>

TITLE 10. DEPARTMENT OF REAL ESTATE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REAL ESTATE COMMISSIONER

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commissioner proposes to adopt, amend and/or repeal sections 2805, 2805.1, 2805.1.5, 2805.5, 2805.9, 2805.11, 2806, 2806.5, 2807, 2807.1, 2807.2, 2807.3, 2807.4, 2808, 2809, 2809.1, 2809.2, 2809.3, 2809.5, 2810, 2810.1, 2810.2, 2810.3, 2810.4, 2810.5, 2810.6, 2810.7, 2811, 2812, 2812.1, 2812.2, 2812.3, 2812.4, 2812.5, 2812.6, 2812.7, 2812.8, 2812.9, 2812.10, 2812.11, 2813, 2813.1, 2813.2, 2813.3, 2813.4, 2813.5, 2813.6, 2813.7, 2813.8, 2813.12, 2813.13, 2813.14, 2814 and 2815 in Title 10 of the California Code of Regulations (CCR).

PUBLIC COMMENTS

The Commissioner or his representative will hold a public hearing starting at 10:00 AM, on March 10, 2005, at the Department of Real Estate Examination Room, located at 2200 X Street, Suite 120B, Sacramento, California. The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Commissioner.

This hearing will be a hearing under Sections 10226 and 11011 of the Business and Professions Code to determine whether license and subdivision fees lower than the statutory maximum should be prescribed.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on March 10, 2005. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

Comments may be sent via electronic mail to regulations@dre.ca.gov or via fax to David B. Seals at (916) 227-9458.

AUTHORITY AND REFERENCE

The changes to the regulations are authorized by Business and Professions Code sections 10080 and 11281 to implement, interpret or make specific Business and Professions Code sections 11212, 11226, 11230, 11231, 11232, 11234, 11240, 11243, and 11245.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The Vacation Ownership and Time-share Act of 2004 (Chapter 697 of the Statutes of 2004) enacted a new statutory approach to the qualification and registration of time-share sales programs in California. In addition, the Act repealed existing statutes relating to time-shares. All of the regulations relating to time-shares no longer have any statutory authority. Therefore, all of the Department's existing time-share regulations will be repealed.

The Department is adopting new regulations discussed herein below to implement the new components of the Vacation Ownership and Time-share Act of 2004.

Sections 11003.5, 11004.6, 11018.8, 11018.9, 11018.10, 11018.11, 11024, and Article 8.5 (commencing with Section 10250) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code governed the qualification and registration of time-share sales programs in California.

The following is a summary of the proposed rulemaking action.

REPEAL OF SECTIONS 2805, 2805.1, 2805.1.5, 2806, 2806.5, 2810, 2810.1, 2810.2, 2810.3, 2810.4, 2810.6, 2810.7, 2811, 2812, 2812.1, 2812.2, 2812.3, 2812.4, 2812.5, 2812.6, 2812.7, 2812.8, 2812.9, 2812.10, 2812.11, 2813, 2813.1, 2813.2, 2813.3, 2813.4, 2813.5, 2813.6, 2813.7, 2813.8, 2813.12, 2813.13, 2813.14

ADOPTION OF SECTION 2805

This proposed change would define the term "developer" for purposes of time-share law.

ADOPTION OF SECTION 2805.5

This proposed change would provide that an offer to sell includes an inducement to travel outside the state for the purpose of attending a time-share sale presentation.

ADOPTION OF SECTION 2805.9

This proposed change would define specific time-share interest use rights as a 60 day priority reservation period. It would also define use rights at accommodations in multi-site time-share plans.

ADOPTION OF SECTION 2805.11

This proposed change would specify the amount of purchaser's funds sufficient to complete improvements that must be held in escrow.

ADOPTION OF SECTION 2806

This proposed change would list items constituting a "material change" to a time-share offering.

ADOPTION OF SECTION 2807

This proposed change would provide for the handling of time-share purchase money.

ADOPTION OF SECTION 2807.1

This proposed change would provide for alternatives to time-share purchase money impounds.

ADOPTION OF SECTION 2807.2

This proposed change would define acceptable escrow depositories for handling time-share purchase money.

ADOPTION OF SECTION 2807.3

This proposed change would define acceptable trustees for holding title to time-share projects.

ADOPTION OF SECTION 2807.4

This proposed change would provide that the Department of Real Estate Budget Review Section is qualified to review time-share budgets.

ADOPTION OF SECTION 2808

This proposed change would set forth the completion bond format.

ADOPTION OF SECTION 2809

This proposed change would provide that an application for a time-share public report shall be made on a form approved by the Department.

ADOPTION OF SECTION 2809.1

This proposed change would define a "properly completed application" for a single site time-share.

ADOPTION OF SECTION 2809.2

This proposed change would define a "properly completed application" for a specific interest multi-site time-share.

ADOPTION OF SECTION 2809.3

This proposed change would define a "properly completed application" for a nonspecific interest multi-site time-share.

ADOPTION OF SECTION 2809.5

This proposed change would set forth criteria for determining if a time-share application has been abandoned.

ADOPTION OF SECTION 2810

This proposed change would set time-share filing fees established by statute.

ADOPTION OF SECTION 2810.5

This proposed change would set reduced time-share filing fees established by statute.

ADOPTION OF SECTION 2811

This proposed change would list criteria for determining whether time-share advertising is misleading.

AMENDMENT OF SECTION 2814

This proposed change would provide that a qualified resort vacation club is subject to the fees set by section 2810.

REPEAL OF SECTION 2815

This proposed change would repeal a section that refers to repealed sections.

EFFECT ON SMALL BUSINESS

The proposed regulatory changes may affect small business.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

1. Plain English drafting: The Commissioner has confirmed that this regulation has been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).
2. Mandate on local agencies and school districts: None.
3. Cost or savings to any state agency: None.
4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None.
5. Other non-discretionary cost or savings imposed upon local agencies: None.
6. Cost or savings in federal funding to the state: None.
7. The Department is not aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Department has determined that any cost impacts will not be significant.
8. The Commissioner has made an initial determination that the adoption, amendment or repeal of this regulation will not have a significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.
10. Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

The backup contact person is:

Larry A. Alamao, Chief Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

**AVAILABILITY OF STATEMENT OF REASONS,
TEXT OF PROPOSED REGULATIONS AND
INTERNET SITE**

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website (www.dre.ca.gov). The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

**COMPLIANCE WITH GOVERNMENT
CODE § 11346.4(A)(1) THROUGH (4)**

The Department of Real Estate (the Department) has complied with Government Code § 11346.4(a)(1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed

Regulations with changes indicated in ~~strikeout~~ and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.
4. The California Association of Realtors, a real estate licensee trade organization, the California Building Industry Association, a home builders trade organization, and the American Resort Development Association, a time-share developers trade association.
5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

**TITLE 14. DEPARTMENT
OF CONSERVATION**

NOTICE OF PROPOSED ACTION

**PROCESSOR AND RECYCLING CENTER
PERMANENT REGULATIONS**

**TITLE 14. NATURAL RESOURCES
DIVISION 2. DEPARTMENT
OF CONSERVATION**

CHAPTER 5. DIVISION OF RECYCLING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 1, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 1. DEFINITIONS

§ 2000. DEFINITIONS

Subsection 2000 (a)(47.5): This subsection has been added to the regulations. It is necessary to define "weight ticket" to mean the written record of the accurately determined weight by material type.

SUBCHAPTER 2. GENERAL REQUIREMENTS

Article 4. General Accounting Requirements

**§ 2090. REPORTS, NOTICES AND CLAIMS
SUBMITTED TO THE DIVISION**

Figure 8: This figure has been amended to be consistent with the requirements for the Consolidated Shipping Report Form in Section 2090(f)(3)(B)(1 to 20).

**§ 2105. PERSONS CERTIFIED AS BOTH PROCESSORS AND RECYCLING CENTERS
(DUAL CERTIFIED ENTITIES).**

Subsection 2105(b): This amendment is necessary to revise the shipping report number from DR-6 (01/02) to DR-6 (10/04) because the shipping report has been revised. This section has also been revised to state that the dual certified entity shall prepare a weight ticket indicating the log and receipt period or the first and last receipt number for the shipping period.

Subsection 2105(c): This amendment is necessary to revise the shipping report number from DR-6 (01/02) to DR-6 (10/04) because the shipping report has been revised.

§ 2110. CANCELED MATERIALS AND REJECTED CONTAINERS

Subsection 2110(c): This amendment is necessary to revise section 2430(a)(6) to 2430(a)(3) because the numbering for this section has been changed due to deletions and revisions of the text.

**SUBCHAPTER 5. PROCESSORS
Article 1. Requirements for Processors**

§ 2401. LOAD INSPECTION REQUIREMENTS

Subsection 2401(e): has been added to Section 2401. This text was moved from subsection 2430(a)(1) to subsection 2401(e) because it discusses processor load inspection requirements.

**Article 3. Accounting and
Reporting Requirements**

§ 2420. RECORDKEEPING

Subsection 2420(b)(1): This subsection has been revised to require processors to prepare weight tickets for each individual load of material subject to the Act delivered to the processor. The processor is also required to prepare weight tickets for nonredeemable material delivered to the processor. This revision will enable the Department to track each load of material delivered to the processor.

Subsection 2420(b)(2)–(4): These subsections have been added to the regulations to require the weight tickets prepared by the processors to comply with the requirements of Division 5 of the Business and Professions Code, commencing with section 12001 governing weighmaster certificates. The weight ticket is also required to state whether California Redemption Value is being claimed for the material.

Subsection 2420(b)(5): This subsection has been added to the regulations to require each load of beverage container material purchased by the processor but not received at the processor's facility to comply with the provisions of subsection 2420 (b)(4). This revision will enable the Department to track loads of material purchased by the processor and not delivered to the processor's facility.

Subsection 2420(b)(6): This sentence has been numbered to subsection (6) for clarity in this section.

§ 2425. REPORTING

Subsection 2425(a): This amendment is necessary to remove the phrase "twice monthly" and the phrase "four times per" from the text because the Department will now allow processors to submit the processor invoice up to eight times per calendar month by adding the text "eight times per calendar".

Subsection 2425(a)(1): This amendment is necessary to state that all reports shall be submitted no later than the 10th day after the last day of the reporting month. The examples in this section have been deleted because they are no longer necessary.

Subsection 2425(a)(2): This amendment is necessary to delete this subsection because it is no longer necessary.

New Subsection 2425(a)(2): This amendment is necessary to allow processors to submit no more than two supplemental processor invoices, per original processor invoice, provided they are submitted no later than forty-five days from certain specified events.

Subsection 2425(a)(2)(A): This amendment is necessary to allow the processor to submit two amended supplemental processor invoices within forty-five days from the due date of the original processor invoice, if the amendment is for new shipping reports not previously submitted with the original processor invoice being supplemented.

Subsection 2425(a)(3): This amendment is necessary to delete this subsection because it is no longer necessary.

New Subsection 2425(a)(3): This amendment is necessary to allow processors to submit no more than two amended processor invoices, per original processor invoice, provided they are submitted no later than ninety days after the due date of the original processor invoice being amended.

Subsection 2425(a)(4): This amendment is necessary to delete this subsection because it is no longer necessary.

Subsection 2425(a)(5): This amendment is necessary to delete this subsection because it is no longer necessary.

Subsection 2425(a)(6): This subsection has been renumbered to subsection 2425(a)(4) due to the deletion of subsections 2425(a)(4) and (5).

Subsection 2425(e): This subsection has been amended to delete the word “The” and replace it with “Each” to be consistent with the first sentence of this paragraph.

Subsection 2425(e)(3): This subsection has been amended to revise the “Glass Shipped Box” to “QGIP” (Quality Glass Incentive Payment) Box to be consistent with the revised shipping report.

Subsection 2425(e)(10): This subsection has been added to require the shipping reports prepared or completed by the processor to include the name of the driver delivering the load of material to the processor. The addition of this information will enable the Department to verify who is transporting the material to the processor.

Subsection 2425(e)(11): This subsection has been added to require the shipping report to include the employer of the driver delivering the load of material to the processor or the name of the freight carrier used to deliver the load of material to the processor.

Subsection 2425(e)(12): This subsection has been added to require the shipping reports prepared or completed by the processor to include the vehicle license number and state of issuance of the vehicle delivering the material to the processor. The addition of this information will enable the Department to verify who is transporting material to the processor.

Subsections 2425(e)(10), (11) and (12): These subsections have been renumbered to subsections 2425(e)(13), (14) and (15) due to the addition of new subsections 2425(e)(10), (11), and (12).

Subsection 2425(e)(15): This subsection has been amended to add the phrase “printed name and” because the signature of the authorized representative of the processor is not always legible.

§ 2430. PAYMENTS

Subsections 2430(a)(1)–(4): The portion of subsection 2430(a)(1) dealing with processor inspection has been moved to new subsection 2401(e) because it discusses processor load inspection requirements. The rest of these subsections have been deleted because they have been replaced with new subsections 2430(a)(1)(A)–(F).

New Subsections 2430(a)(1)(A)–(F): These subsections are necessary to require processors to weigh and inspect all loads received from recycling centers before completing shipping reports. The processors must verify all information shown on the shipping report, record the received weight of the containers, sign and date the shipping report, calculate the refund value payment, calculate the processing payment and calculate the administrative fee.

Subsection 2430(a)(5): This subsection has been renumbered to subsection 2430(a)(2) due to the deletion of subsections 2430(a)(1)–(4). The phrase “in addition to the provisions of this section” has been added to this subsection to clarify that processors must comply with this section and the additional requirements listed in this subsection.

Subsection 2430(a)(6): This subsection has been renumbered to subsection 2430(a)(3) due to the deletion of subsections 2430(a)(1)–(4).

Subsection 2430(a)(7): This subsection has been renumbered to subsection 2430(a)(4) due to the deletion of subsections 2430(a)(1)–(4).

Subsections 2430(b)(2)(A)1 and 2430(b)(2)(A)2: These subsections have been amended to add the phrase “in effect on the date the material was received” to state that the segregated value per pound and the applicable processing payment for curbside programs will be at the rate in effect on the date the material was received.

Subsections 2430(c)(2)(A)1 and 2430(c)(2)(A)2: These subsections have been amended to add the phrase “in effect on the date the material was received” to state that the segregated value per pound and the applicable processing payment for dropoff or collection programs, and community service programs will be at the rate in effect on the date the material was received.

SUBCHAPTER 6. RECYCLING CENTERS

Article 3. Accounting and Reporting Requirements

§ 2525. RECORDKEEPING

Subsections 2525(l)(1)–(12): These subsections have been added to require recycling centers to prepare weight tickets for each load of material subject to the Act delivered by a dropoff or collection program, community service program, curbside program or another recycling center. The recycling center is also required to prepare weight tickets for nonredeemable material delivered to the recycling center by a dropoff or collection program, community service program, curbside program or another recycling center. This revision will enable the Department to track each load of material delivered to the recycling center. This subsection lists all of the information required to be

contained on each weight ticket prepared by the recycling center for material received from dropoff or collection programs, community service programs, curbside programs, or other recycling centers.

§ 2530. REPORTING

Subsection 2530(e)(4)(C) and (D): These subsections have been deleted because they are no longer necessary. The processing payment is an entitlement to the recycling center. It is calculated by the Department's payment and report processing system and it is based on the refund value payment.

Subsection 2530(e)(6): This amendment is necessary to add the phrase "printed name and" to the information required on the shipping report because the signature of an authorized representative of the recycling center is not always legible.

Subsection 2530(f)(6) and (7): These subsections have been amended to add the phrase "printed name and" to the information required on the shipping report because the signature of the shipper or an authorized representative of the shipper and the signature of the authorized representative of the recycling center are not always legible.

Subsection 2530(f)(11): This subsection has been amended to revise the "Glass Shipped Box" to "QGIP" (Quality Glass Incentive Payment) Box. This will make the text consistent with how the box is identified on the shipping report.

§ 2540. RECEIPT OF FUNDS

Subsection 2540(b): This subsection has been revised to change the reference from section 2430(a)(2) to subsection 2430(a)(1)(D), (E) and (F) because section 2430 has been amended and the reference changed.

SUBCHAPTER 11.5 QUALITY GLASS INCENTIVE PAYMENTS

Article 1. General Requirements

§ 2850. QUALITY GLASS INCENTIVE PAYMENTS

Subsection 2850(b): This amendment is necessary to revise the shipping report number from DR-6 (01/02) to DR-6 (10/04) because the shipping report has been revised.

Shipping Report: This amendment is necessary to revise the shipping report. The processing payment information has been deleted from the shipping report. This payment is an entitlement and it is calculated by the Department's payment and report processing

system and is based on the refund value payment. The subtotal column is no longer necessary since the processing payment information from the top portion of the shipping report has been eliminated. The driver's name, employer or freight carrier, vehicle license number and state have been added to the shipping report, since these items have been added as a requirement to the text of the processor reporting regulations. The instruction box on how to fill out the Quality Glass Incentive Payment (QGIP) box has been removed because it is no longer necessary. This instruction box was a narrative description of how to fill in the QGIP box on the shipping report. This information was merely descriptive and is not needed on the shipping report. Regulatory text sections 2425(e)(3) and 2530(f)(11) clarify what to record in the QGIP box on the shipping report.

INFORMATION IS AVAILABLE UPON REQUEST

Copies of the text, the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request and at our website: www.conservation.ca.gov. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Karen Denz, at (916) 322-1899. General or substance questions regarding this file may also be directed to Karen Denz. The backup agency contact person for this rulemaking file is Eloisa Hernandez, who may be contacted at (916) 327-2757. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to the Department. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on March 7, 2005. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not

be responded to in the rulemaking file. Submit your written comments to: Karen Denz, Processor and Recycling Center Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@consrv.ca.gov, or faxed to (916) 327-8668.

PUBLIC HEARING

A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with the changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the existing law, the California Beverage Container Recycling and Litter Reduction Act (Act) encourages recycling of specific beverage containers and the reduction of littered beverage containers along the State's highways. Under this Act, the Department, through the Division of Recycling (Division), is responsible for administering the Act and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

"Weight ticket" has been added to the definitions and the requirements for a processor's weight ticket and a recycling center's weight ticket have been described in detail in the processor recordkeeping section and the recycling center recordkeeping section. These new requirements will allow the Department to track loads of beverage container material types

delivered to processors and recycling centers and will require the corresponding shipping report number for the load of material to be on the weight ticket and to indicate if California Redemption Value (CRV) is being claimed for the load.

There are a high number of reporting errors on the shipping reports due to certified recyclers calculating and requesting incorrect processing payments. These regulations remove the requirement for recycling centers to calculate processing payments. The requirements for recycling centers have been replaced with language requiring the processors to calculate the processing payments based on the applicable redemption weight.

These regulations will allow certified processors to submit a second supplemental and a second amended processor invoice per material type, per original processor invoice. Currently, processors are allowed to submit one amended and one supplemental processor invoice per material type per original reporting period.

The shipping report (DR-6) has been amended to reflect the changes to the text of the regulations.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code Sections, 14530.5(b) and 14536.

REFERENCE

Public Resources Code Sections, 14518.5, 14519.5, 14537, 14538, 14539, 14549.1, 14550, 14551, 14552, 14553, 14572, and 14573.5.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations do not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Costs or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language.

These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: Any cost impact that a representative private person or business may incur in reasonable compliance with the proposed action can be mitigated.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will not affect small businesses. These proposed regulations serve to clarify and make specific existing requirements contained in statute. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarifies existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department,

would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: www.conservation.ca.gov.

TITLE 14. DEPARTMENT OF FISH AND GAME

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE OF THE DEPARTMENT OF FISH AND GAME, THE FISH AND GAME COMMISSION AND THE WILDLIFE CONSERVATION BOARD

NOTICE IS HEREBY GIVEN that the Department of Fish and Game (DFG), Fish and Game Commission (FGC) and the Wildlife Conservation Board (WCB) pursuant to the authority vested in it by section 87306 of the Government Code, proposes to amend its Conflict of Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The DFG, FGC and WCB propose to amend the Conflict of Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of sections 87300 through 87302, and section 87306 of the Government Code.

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In addition to nonsubstantive clarifying changes, the following positions are added to the Conflict of Interest Code:
Position Classifications added:

Accounting Administrator I (Spec)	Accounting Administrator I (Sup)	Administrative Officer I
Administrative Officer II	Administrative Officer III	Agriculture Chemist II
Agricultural Chemist III (Spec)	Agricultural Chemist III (Sup)	All Career Executive Assignment (CEA) Positions
Alternate Members, Wildlife Conservation Board	Aquaculture Coordinator	Assistant Chief Counsel
Assistant Civil Engineer	Assistant Executive Director, Fish and Wildlife Conservation	Associate Accounting Analyst
Associate Biologist	Associate Budget Analyst	Associate Civil Engineer
Associate Editor of Publications	Associate Engineering Geologist	Associate Fish Pathologist
Associate Governmental Program Analyst	Associate Hydraulic Engineer	Associate Industrial Hygienist
Associate Information Systems Analyst (Spec)	Associate Information Systems Analyst (Sup)	Associate Land Agent
Associate Management Auditor	Associate Personnel Analyst	Associate Programmer Analyst (Spec)
Associate Programmer Analyst (Sup)	Associate Toxicologist	Associate Wildlife Veterinarian
Business Service Assistant	Business Service Officer I (Spec)	Business Service Officer I (Sup)
Business Service Officer II (Spec)	Business Service Officer II (Sup)	Business Service Officer III
California Advisory Committee on Salmon & Steelhead Trout	California Coastal Salmonid Restoration Grant Peer Review Committee	Captain, Fish and Game Boat
Chief Deputy Director, Department of Fish and Game	Chief Deputy Director, Office of Spill Prevention & Response	Civil Engineer Associate
Commissioners	Data Processing Manager III	Deputy Administrator, Office of Spill Prevention & Response
Deputy Director, Community Relations & Partnerships	Deputy Director, Legislative Affairs	Director, Department of Fish and Game
Environmental Program Manager I (Managerial)	Environmental Program Manager I (Sup)	Environmental Program Manager II
Environmental Scientist	Executive Director, Fish and Game Commission	Executive Director, Wildlife Conservation Board
Fish and Game Assistant Chief	Fish and Game Captain	Fish and Game Lieutenant (Spec)
Fish and Game Lieutenant (Sup)	Fish and Game Warden	Fish and Game Interpreter II
Fish and Game Interpreter III	Fish Habitat Supervisor	Fish Hatchery Manager I
Fish Hatchery Manager II	General Counsel	Information Officer II
Labor Relations Analyst	Labor Relations Specialist	Lieutenant, Fish and Game Boat
Master, Fish and Game Vessel	Mate, Fish and Game Vessel	Members of the Wildlife Conservation Board
Motor Vessel Engineer	Oil Spill Prevention Specialist	Oil Spill Prevention Supervisor I
Oil Spill Prevention Supervisor II	Personnel Supervisor II	Plant Ecologist
Public Land Management Specialist III	Public Land Management Specialist IV	Public Land Manager I
Public Land Manager II	Research Analyst II (Gen)	Research Analyst II (GIS)
Research Manager I (Gen)	Research Manager I (GIS)	Research Manager II (Gen)
Research Manager II (GIS)	Research Manager III (GIS)	Research Program Specialist I (GIS)
Research Program Specialist II (Econ)	Research Program Specialist II (GIS)	Research Writer
Senior Accounting Officer (Spec)	Senior Accounting Officer (Sup)	Senior Biologist (Spec)
Senior Biologist (Sup)	Senior Civil Engineer	Senior Environmental Scientist
Senior Fish Habitat Supervisor	Senior Fish Pathologist	Senior Hatchery Supervisor
Senior Hydraulic Engineer	Senior Industrial Hygienist	Senior Information Systems Analyst (Spec)
Senior Information Systems Analyst (Sup)	Senior Land Agent	Senior Management Auditor
Senior Programmer Analyst (Spec)	Senior Programmer Analyst (Sup)	Senior Toxicologist
Senior Warden Pilot	Senior Wildlife Forensic Specialist	Senior Wildlife Veterinarian Specialist
Senior Wildlife Veterinarian Supervisor	Special Advisor, Science & Environmental Programs & Policy	Staff Administrative Analyst, Accounting Systems
Staff Counsel	Staff Counsel III (Spec)	Staff Counsel III (Sup)
Staff Environmental Scientist	Staff Information Systems Analyst (Spec)	Staff Information Systems Analyst (Sup)
Staff Management Auditor (Spec), State Controller's Office	Staff Programmer Analyst (Spec)	Staff Programmer Analyst (Sup)
Staff Services Manager I	Staff Services Manager II (Man)	Staff Services Manager II (Sup)
Staff Services Manager III	Staff Toxicologist (Spec)	Staff Toxicologist (Sup)
Statistical Methods Analyst III	Supervising Biologist	Supervising Land Agent (Sup)
Supervising Program Technician III	Telecommunications System Analyst II	Telecommunications System Manager I (Spec)
Training Officer I	Training Officer II	Training Officer III
Wildlife Habitat Supervisor I	Wildlife Habitat Supervisor II	

This amendment reflects the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than March 11, 2005, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than 15 days prior to the close of the written comment period by contacting the Contact Person set forth below.

The DFG has prepared a written explanation of the reasons for the proposed amendments (Initial Statement of Reasons) and has available the information on which the amendment is based. Copies of the proposed amendment, the Initial Statement of Reasons and the information on which the amendment is based may be obtained by contacting the Contact Person set forth below.

The DFG has determined that the proposed amendment:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any State agency.
3. Imposes no cost on any local agency or school district that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the State.
6. Will not have any potential costs impact on private persons, businesses or small businesses.

In making these proposed amendments, the DFG, FGC and WCB has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

CONTACT PERSON

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Marcie Larson
Staff Counsel
1416 9th Street, 13th Floor
Sacramento, CA 95814
Telephone: (916) 651-7647

FAX: (916) 654-3805
Email: mlarson@dfg.ca.gov

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 8254 and 8259, of the Fish and Game Code and to implement, interpret or make specific sections 2365, 7852.2, 8043, 8046, 8250-8259, 9002-9006, and 9010, of said Code, proposes to amend Section 122, Title 14, California Code of Regulations, relating to the transferability of commercial spiny lobster fishing permits.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State law (Sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial lobster permits.

Existing regulations (Section 122, Title 14, California Code of Regulations) set the conditions for issuance and renewal of commercial lobster fishing permits.

Under these regulations all lobster operator permits are non-transferable.

The proposed amendments would create a transferable lobster operator permit and set qualification criteria based on prior participation. The Commission will consider a range of landings from either Option A or Option B, below to have an existing 2005-06 non-transferable permit designated a transferable permit.

Option A: A fisherman would have to have landed a minimum of 500 pounds per year in 4 of 5 years during the window period extending from the 1996-97 through the 2000-01 season or have landed a minimum 2,000 pounds per year in [1 or 2] of the same 5 year window period (1996-97 through 2000-01). All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

Option B: A fisherman would have to have landed a total of [500 to 80,000] pounds within the time period commencing with the [1996-97-2000-01] season and ending with the [2000-01-2003-04] season. All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

All 2005-06 permits not meeting the qualification criteria would remain non-transferable.

The Department would be charged with making an initial determination as to who meets the qualification criteria and notifying all lobster operator permit holders as to that determination. Any lobster operator permit holders not meeting the qualification criteria based on Department records could submit copies of their own records to show they do meet them. Such copies would have to be submitted on or before March 31, 2006.

Existing regulation sets the deadlines for submission of lobster operator permit renewal applications as May 31 (normal, no penalty fee), June 1–30 (late renewal, \$50 late penalty) and after June 30 (no renewal, permit application returned).

The proposed action would advance those deadlines by one month in each instance, to April 30 (normal), May 1–31 (late) and after May 31 (no renewal) and clarify that any permit not renewed will be considered forfeited to the Department. In addition, the proposed regulations state that the late penalty is determined pursuant to Section 7852.2 of the Fish and Game Code, instead of listing the actual dollar amount.

There are no regulations regarding the transfer of lobster operator permits. The proposed action would set the conditions under which transferable lobster operator permits could be transferred to new fishermen. To transfer a permit the permit holder or his/her estate would have to submit a notarized letter identifying the transferee, the original transferable lobster operator permit, a copy of the transferee's current California commercial fishing license, and a non-refundable \$500 permit transfer fee to the Department's License and Revenue Branch in Sacramento. The new permit would be valid for the remainder, if any, of the then current lobster season and could be renewed as provided.

The Commission will consider if there should be a limit of from 2 to 25 permit transfers per year until March 31, 2008, after which date any number of permits could be transferred, or if there should be no limit on transfers at all. Permit transfer requests would be processed in the order received. If on any given day the number of applications received exceeded the available number of transfers the Department would conduct a drawing to determine which application(s) shall be accepted. This limit would not apply in the case of the death of the permittee. The estate of a deceased permit holder would be able to renew the permit if needed to keep it valid, and would have one year from the date of death of the permit holder, as listed on the death certificate, to transfer the permit.

Existing regulations require fishermen to complete and submit an accurate record of fishing activity on the "Daily Lobster Log, DFG 122 (6/95)", provided by the Department. That form was updated in July 1996 to provide for recording up to three days' fishing

activity on one page. No changes were made in the information required on the log. The proposed changes will update the log book reference to "Daily Lobster Log, DFG 122 (7/96)," and make the non-substantive change to incorporate the log by reference rather than print a copy in Title 14.

Any person denied the reclassification of his/her 2005–06 lobster operator permit by the Department would be able to appeal that denial to the Commission within 60 days.

Several non-substantive changes in punctuation and grammar have been made for clarity throughout the regulatory text.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, California, on Friday, February 4, 2005 at 8:30 a.m. or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Secretary of State Auditorium, 1500 11th Street, Sacramento, California, on Thursday, May 5, 2005 at 8:30 a.m. or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 28, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than May 5, 2005 at the hearing in Sacramento. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days

prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. By allowing the free-market transfer of spiny lobster fishing permits the proposed action may provide a positive economic impact through the sale of a complete business package, i.e., a lobster fishing boat, traps and permit. This fishery is limited to southern California, south of Point Conception, Santa Barbara County, so there is no California spiny lobster fishing businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed action will not have an immediate impact on the creation or elimination of jobs or businesses in the state. The permits that are designated as transferable will provide for the orderly sale of a complete business package for the harvest of California spiny lobster. The persons whose permits are designated as non-transferable will be able to continue fishing for California spiny lobster for as long as they chose to do so. The proposed action will not impact the expansion of business in California.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF PROPOSED RULEMAKING

FAMILY COST PARTICIPATION REGULATIONS

The Department of Developmental Services (DDS) proposes to adopt sections 50243, 50245, 50247, 50249, 50251, 50253, 50255, 50257, 50259, 50261, 50262, 50263, 50265 and 50267 to Title 17, California Code of Regulations (CCR), Division 2, Subchapter 2.5, Family Cost Participation (FCP).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written comment period closes at 5:00 p.m. on March 7, 2005. DDS will only consider comments received at its Headquarters by that time. Please submit any written comments to the DDS' contact persons designated below.

PUBLIC HEARING

A public hearing to receive oral and written comments is scheduled as follows:

March 7, 2005, at 10:00 a.m. in Office Building 9 (Twin Tower), Auditorium, Room 102, located at 744 P Street, Sacramento, CA 95814.

DDS requests that persons who make oral comments at the public hearing submit a written copy of their testimony at the hearings. The hearing location is wheelchair accessible.

AUTHORITY AND REFERENCE

Authority: Section 4783, Welfare and Institutions Code (WIC)

Reference: Sections 4512, 4514, 4646(b), 4677, 4685(c)(6), 4782, 4783, 4784, WIC. Section 1915(c)(6), Social Security Act.

INFORMATIVE DIGEST/POLICY STATEMENT

WIC, Section 4783, establishes the Family Cost Participation Program (FCPP) for the purpose of assessing a cost participation to parents, who have a child to who all of the following applies:

- (A) The child has a developmental disability.
- (B) The child is 3 years of age through 17 years of age.
- (C) The child lives in the parents' home.
- (D) The child receives services and supports purchased through the regional center.

The amount of the Family Cost Participation (FCP) is determined by a sliding scale for families with annual gross income not less than 400 percent of the federal poverty guideline and adjusted by the number of people living in the family home. The FCP only applies to respite, day care, and camping services that are included in the child's Individual Program Plan (IPP).

The adoption of the emergency regulations will allow finalization and provide a more consistent statewide implementation of the FCPP, which became effective January 1, 2005.

Section 50243, establishes the authority for the implementation of the FCPP under Section 4783 of the WIC.

Section 50245, defines the term "Developmental Disability" which means a disability, which originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual.

Section 50247, defines the term "Institutionally Deemed" as the income and resources of a parent are not deemed to the consumer, therefore, making the consumer eligible for Medi-Cal if all other Medi-Cal eligibility criteria are met.

Section 50249, defines the term "Family Cost Participation Schedule" as the official table developed by DDS and used by the regional centers to determine the amount of the FCP.

Section 50251, defines the term "Gross Annual Income" as the income of the parents as reported on their latest California State and Federal Income Tax returns and includes any money or benefit acquired, earned, or received as payment for labor or services, support, or return on investments. Income from the operation of a business or from self-employment is the net income after deducting business expenses. Depreciation, amortization, and depletion shall not be allowed as business expense deductions.

Section 50253, defines the term "Persons Living In The Family Home" as those persons who depend on the gross family income of the parents for more than one-half of his/her support. This is used to determine family size.

Section 50255, defines the term "Parent" to be the mother, father, or both, as defined under WIC, Section 4783(a)(1), and further defined under Section 50215, Title 17, CCR, as being jointly and severally responsible for the assessed amount of the FCP.

Section 50257, states that DDS has the responsibility to develop a pamphlet describing the FCPP, in addition to developing all forms necessary for the regional center to administer the program.

Section 50259, makes specific that the FCPP shall not impact any other services other than those identified in Section 4783(c), WIC. It also clarifies that reductions due to multiple minor children receiving services shall only impact the FCPP and shall not reduce fees for consumers in 24-hour, out-of-home placements.

Section 50261, describes the parents' responsibility to provide the regional center with proof of their gross annual income within ten (10) working days from the date the parents sign the IPP. Failure to provide this information will result in the regional center setting the FCP at the maximum.

Section 50262, clarifies and assures parents that any documentation submitted as proof of income, or any correspondence from the regional center, shall be confidential pursuant to Section 4514, WIC. This section also makes specific the time frame for retention of documents.

Section 50263, exempts those parents whose child is "Institutionally Deemed" Medi-Cal eligible, from participation in the FCPP. This section is necessary to ensure consistency in administration of the program across 21 regional centers.

Section 50265(a), allows for adjustments to the FCPP by the regional center Executive Director in those situations of catastrophic loss that would result in a direct economic impact to the family if the amount was not reduced.

Section 50265(a), Subsections (a) and (b), are necessary to ensure efficient and consistent administration of the program across the 21 regional centers.

Section 50265(b), defines the term “Direct Economic Impact” to that which are basic family needs such as food, shelter, clothing, or medical care, but does not limit to just these specific needs. This provision allows the regional center Executive Director flexibility in the application of this term.

Section 50265(c), allows for documented non-reimbursed dollar cost of a direct economic impact to be deducted from the gross annual income and recalculation of the FCP based on adjusted income. This section is necessary to ensure the discretionary adjustments are calculated in a consistent manner.

Section 50265(d), requires regional centers to re-determine, at least annually, those FCPs that have been adjusted by the Executive Director, consistent with the authorizing legislation.

Section 50267, allows for a reduction or increase of a FCP based on a reduction or increase in the gross annual income. This would also allow for the adjustment based on an increase or decrease in the amount of services provided pursuant to a change in the IPP or family size. This section is necessary to ensure the FCP is updated consistent with the changes in the family or consumer’s circumstances.

SMALL BUSINESS DETERMINATION

DDS has determined that the proposed regulations may affect small businesses. Parents who are assessed a FCP amount will be required to pay vendors directly for services and supports provided to their child. Parents who fail to make payment to vendors for services provided, or parents who elect not to purchase the portion of services for which they are financially liable, may result in a financial impact on those small businesses.

LOCAL MANDATE DETERMINATION

DDS has determined that the proposed regulatory actions do not impose: 1) a mandate on local agencies or school districts; 2) costs to any local agency or school district that must be reimbursed in accordance with Government Code, Sections 17500 through 17630; 3) other nondiscretionary costs or savings imposed on local agencies; and, 4) costs or savings in federal funding to the State. DDS has determined that the proposed regulatory actions do impose significant savings to State agencies. Based on assumptions used for the 2004-05 May Revision, the Fiscal Year (FY) 2004-05 total net savings is \$0; however, the FY 2005-06 total net savings is projected to be \$2,231,000.

ASSESSMENT STATEMENT

By statute, the creation of the FCPP as clarified by this proposed action, will create approximately 15 new positions across the 21 non-profit regional centers located throughout the State providing services to the developmentally disabled. These positions are funded by the State through the contracts between the regional centers and DDS. The proposed action will not: a) help in the creation of new business within the State of California; nor, b) cause the expansion of business currently doing business within the State of California. DDS has determined that the proposed regulations will not eliminate jobs within the State of California. DDS has determined that the proposed regulations will not have: a) a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states; nor, b) a significant effect on housing costs. By statute, this program will have a cost impact on parents of eligible children not exceeding the amount of the parental fee that the parent would pay if the child lived in a 24-hour, out-of-home facility, which currently has a maximum fee of \$662 per month. DDS has determined that the proposed regulations will not have a significant potential cost impact on directly affected businesses beyond those described under the “Small Business Determination” noted above.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The FCPP impacts the 21 non-profit regional centers located throughout the State providing services to the developmentally disabled and parents of eligible children. It is estimated that the FCPP will create 15 new regional center positions with initial average costs of \$27,000 per regional center, which includes the additional cost for reporting, programming, and record keeping. However, this cost is funded through contracts between the regional centers and DDS. Other than those costs previously identified for select small businesses and parents of eligible children, DDS is not aware of any cost impacts that a representative, private person, or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES CONSIDERED

During the course of this rulemaking, the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed action.

The Department has made an initial determination that these proposed regulations are the most effective manner of meeting the requirements of Welfare and Institutions Code Section 4783. The Department will take written comments and hold a public hearing on March 7, 2005, for additional comments and consider other alternatives on these proposed FCPP regulations.

CONTACT PERSON

Comments and inquiries concerning the proposed action or substance of proposed action may be directed to:

Attention: Larry Lipsmeyer, Program Manager
Client Financial Services Section
1600 Ninth Street, Room 205, MS 2-3
Sacramento, CA 95814
Email: llipsmey@dds.ca.gov
Phone: (916) 654-3355
Fax: (916) 653-4587/(916) 654-3186

If Mr. Lipsmeyer is unavailable, comments and inquiries concerning the proposed action or substance of the proposed action may be directed to:

Attention: Katherine Williamson, Chief
Client Financial Services Section
1600 Ninth Street, Room 205, MS 2-3
Sacramento, Ca. 95814
Email: Katherine.Williamson@dds.ca.gov
Phone: (916) 654-2422
Fax: (916) 653-4587/(916) 654-3186

AVAILABILITY OF RULEMAKING DOCUMENTS

DDS has prepared and has copies ready for public review of the exact text of the proposed regulations and Initial Statement of Reasons (ISOR) for the proposed regulations, and all of the information upon which the proposed regulations are based. Copies of the ISOR and text of the proposed regulations, along with all other public records, reports, documentation, or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact persons at the above address. In addition, the text, ISOR and other materials for this rulemaking may be viewed over the Internet at www.dds.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DDS may adopt the proposed regulations as described in this notice. If DDS makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before DDS adopts the regulations as revised. If the

text is modified, the text may be viewed over the Internet at www.dds.ca.gov. Please send requests for copies of any modified regulations to the contact persons named above.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons is available, it may be viewed over the Internet at www.dds.ca.gov. Additionally, requests for the Final Statement of Reasons could be made to the contact persons named above.

TITLE 17. DEPARTMENT OF HEALTH SERVICES

ACTION

Notice of Emergency Rulemaking
Title 17, California Code of Regulations

SUBJECT

Newborn Screening Program Fee Increase,
R-12-04E

The California Department of Health Services (Department) has adopted the regulations described in this notice on an emergency basis.

PUBLIC PROCEEDINGS

The Department will conduct written public proceeding, during which time any interested person or such person's duly authorized representative may present statements, arguments, or contentions (hereinafter "comments") relevant to the action described in this notice.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation control number, R-12-04E:

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on March 7, 2005, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or

2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-12-04E" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments" link to the Department website at
<http://www.dhs.ca.gov/regulation/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

TO OBTAIN THE REGULATIONS REFERENCED IN THIS NOTICE

1. Materials regarding these regulations (including this public notice, the regulation text, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then clicking on the "Select DHS regulations" button.
2. In order to request a copy of this regulation package be mailed to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.

INQUIRIES

Inquiries regarding the substance of the emergency regulations described in this notice may be directed to George C. Cunningham, M.D., M.P.H., Chief of the Genetic Disease Branch at (510) 412-1499.

All other inquiries concerning the action described in this notice may be directed to Don Lee of the Office of Regulations at (916) 440-7673, or to the designated backup contact person, Linda Tutor, at (916) 440-7697.

Upon request, this document will be made available in Braille, large print, and audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay at 711/1-800-735-2929.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code (H&S Code) Section 125000 currently requires screening of all newborns for heritable and congenital disorders and Section 125025 requires screening for sickle cell anemia. Testing for hemoglobinopathies, phenylketonuria, hypothyroidism and galactosemia is established in Title 17, California Code of Regulations Section 6501.

H&S Code Section 125001 adds several new disorders. Existing law, H&S Code Sections 124977, 124996 and 125000, provides authority to the Department of Health Services (DHS) to establish fees and requires DHS to fully support the operation of the program by fees. The fee amounts are implemented in Title 17, California Code of Regulations, Section 6508.

Recent statutory enactment (Budget Act 2004, Health, Senate Bill 1103, Chapter 228, Statutes of 2004) amended H&S Code Section 125001 to require DHS to expand coverage to include "tandem mass spectrometry screening for fatty acid oxidation, amino acid and organic acid disorders and congenital adrenal hyperplasia as soon as possible."

This emergency regulatory action authorized by H&S Code Section 124977(d)(1) amended Section 6508 to increase the total fee for the newborn screening program services from \$60 to \$78. The participation fee was \$59, to which was added a \$1 charge for a specimen record form. The participation fee was increased to \$77, and the charge for forms remains at \$1.

The increased fee is necessary to provide the additional screening services required under amendments to H&S Code Section 125001. The fee increase assures that the newborn screening program will continue to be fully supported "from the fees collected" as required by H&S Code Sections 124996 and 124977. Moreover, this fee increase will enable DHS to provide at its current authorized level a statewide newborn screening program that is consistent with medical standards, expanding medical knowledge, and the mandates of the Hereditary Disorders Act (H&S Code Section 124996, et. seq.). The emergency regulation also specifies that the fee established by regulation must be paid even if the parents consent to participate in additional State approved investigative tests as part of a newborn screening demonstration project.

These emergency regulatory changes do not conflict with or duplicate any federal or state statutes, regulations or policies.

Specifically, the emergency action amends Title 17, California Code of Regulations, Section 6508.

AUTHORITY

Sections 124977, 124996 and 125000, Health and Safety Code.

REFERENCE

Sections 124977, 124980, 124996, 125000 and 125001, Health and Safety Code.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: Additional expenditures of approximately \$751,000 General Fund in the current State Fiscal Year. It is anticipated that State agencies will be able to absorb these additional costs with their existing budgets and resources.
- C. Fiscal Effect on Federal Funding of State Programs: Additional expenditures of approximately \$751,000 Federal Fund Participation in the current State Fiscal year.

All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the emergency action: The total costs that a person without health insurance would incur would be \$78, which is an \$18 increase over existing costs.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small business. There will be a small but undeterminable impact on some small businesses, insurance companies providing maternity benefits and to women/families without insurance coverage who receive testing services for newborn screening.

The Department has determined that the regulations will have no impact on housing costs.

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF REGULATIONS**

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay 711/1-800-735-2929. Note: The range of assistive

services available may be limited if requests are received less than ten working days prior to a public hearing.

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

ACTION

Notice of Proposed Rulemaking
Title 28, California Code of Regulations

SUBJECT

Independent Medicare and Urgent or Emergency Services Language, Control #2004-0422, Amending Section 1300.70.4 in Title 28, California Code of Regulations

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Director) proposes to adopt regulations under the Health Care Service Plan Act of 1975 (Act) relating to Independent Medical Review System by amending section 1300.70.4 in title 28, California Code of Regulations. Before undertaking the action, the Director will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may request in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department of Managed Care's (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by the Department. Comments must be received by the Office of Legal Services, Department of Managed Health Care, by 5 p.m. on March 7, 2005, which is hereby designated as the close of the written comment period.

Comments may be transmitted by regular mail, FAX or email:

Email: regulations@dmhc.ca.gov

Mail Delivery: Regulation Coordinator
Department of Managed
Health Care
Office of Legal Services
980 9th Street, Suite 500
Sacramento CA 95814
Fax: (916) 322-3968

Please note, if comments are sent via email or fax, there is no need to send the same comments by mail delivery. All comments, including email, fax transmissions or mail delivery should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited. Please address all comments to the Department of Managed Health Care, Office of Legal Services.

Inquiries regarding the substance of the proposed regulation described in this notice may be directed to Phillis Soresi, Staff Service Analyst, at (916) 322-6727. All other inquiries concerning the action described in this notice may be directed to Elaine Paniewski, Associate Governmental Program Analyst, at (916) 322-6727.

CONTACTS

Please identify the action by using the Department's regulation control number and title, **2004-0422, Independent Medicare and Urgent Care or Emergency Services Language** in any of the above inquiries.

AVAILABILITY OF DOCUMENTS

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) are available via the internet. The documents may be accessed at <http://www.hmohelp.ca.gov/library/regulations/> under the heading Proposed Regulations. As required by the Administrative Procedure Act, the Department's Office of Legal Services maintains the rulemaking file. At the present time, the rulemaking file consists of the text of the regulations, the initial statement of reasons, and the notice. The rulemaking file is available for public inspection at the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Suite 500, Sacramento, CA 95814. To view the file, please call to make an appointment: (916) 322-6727.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Health and Safety code sections 1344 and 1346 vest the Director with the power to administer and enforce the provisions of the Act.

California Health and Safety Code section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as

are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter. In addition, the Director may honor requests from interested parties for interpretive opinions.

California Health and Safety Code section 1346 vests in the Director the power to administer and enforce the Act, including but not limited to recommending and proposing the enactment of any legislation necessary to protect and promote the interests of plans, subscribers, enrollees, and the public.

In 2001, the Central District Court of California enjoined the Department of Managed Health Care from 1) enforcing all California state standards specifically preempted by 42 U.S.C. § 1395w-26(b)(3) and 2) from enforcing or attempting to enforce any State law, regulation, order or requirement of any and all types subject to preemption by 42 U.S.C. § 1395w-26(b)(3) including but not limited to the specifically preempted laws, (*California Association of Health Plans v. Zingale*, (Case No. 00-06803 RSWL (Mcx), UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, 2001 U.S. Dist). Specifically listed in the order were Health and Safety Code sections 1370.4, 1374.30 and 1374.33, which this regulation was based upon.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Act) amended the Social Security Act, including 42 U.S.C. § 1395w-26(b)(3). (P.L. 108-173). The amendment to 42 U.S.C. § 1395w-26 clarifies that those provisions which conflict with or are occupied by federal law, all state laws creating standards for Medicare + Choice or Medicare Advantage plans are preempted except for two carve outs related to licensure laws and plan solvency.

Amending section 1300.70.4 in title 28, California Code of Regulations is necessary in order to specify that Medicare enrollees are eligible to apply for independent medical review as long as it does not conflict with Federal Law. It is also necessary to add a clear definition of urgent care or emergency services for health care service plans and enrollees.

AUTHORITY

Health and Safety Code sections 1342, 1344, and 1346

REFERENCE

Health and Safety Code section 1370.4

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulation(s) should be addressed to Phillis Soresi, Staff Service Analyst, at (916) 322-6727. The Director will accept written, faxed or e-mailed comments on the modified regulation(s) for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Phillis Soresi, Staff Service Analyst, at (916) 322-6727 or available on the internet at <http://www.hmohelp.ca.gov/library/regulations/> under the heading Proposed Regulations.

ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified or brought to its attention, would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

FISCAL IMPACT STATEMENT

- Mandate on local agencies and school districts: None
- Cost or Savings to any State Agency: None
- Direct or Indirect Costs or Savings in Federal Funding to the State: None
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None
- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- Effect on Housing Costs: None
- Other non-discretionary cost or savings imposed upon local agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations will have no impact on housing costs.

The Department has determined that the regulations do not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342(h)(2).

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses, or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses currently doing business within the State of California.

FINDING REGARDING REPORTING REQUIREMENT

Government Code section 11346.3(c) provides as follows:

“No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.”

All reporting requirements included in these regulations do apply to businesses because the Department has determined that the regulations are necessary to maintain the health, safety and welfare of the people of the State of California.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT, AND RULEMAKING FILE:

The Department has prepared and has available for public review the following documents:

1. Initial Statement of Reasons
2. Text of proposed regulations

3. All information upon which the proposal is based (rulemaking file)

This information is available by request at the Department of Managed Health Care, Office of Legal Services, 980 9th St., Sacramento, CA 95814, or on our website at <http://www.hmohelp.ca.gov/library/regulations/>, under the heading, Proposed Regulations.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 Tracking Number 2080-2004-019-01

PROJECT: Release for Harvest of Marbled Murrelet Habitat Type “D” Stands
Timber Harvesting Plans 1-04-220HUM, 1-04-238HUM, 1-04-239HUM

LOCATION: Humboldt County

NOTIFIER: The Pacific Lumber Company, Scotia Pacific Company LLC, and Salmon Creek Corporation

BACKGROUND

On February 24, 1999, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service issued to The Pacific Lumber Company, Scotia Pacific Company LLC., and Salmon Creek Corporation (collectively known as PALCO), a “no jeopardy biological opinion” (FWS 1-14-99-18) for the proposed incidental take of up to 17 species that would occur as a result of habitat loss and disturbance associated with timber harvesting activities described in the February 1999 PALCO Habitat Conservation Plan (HCP). On March 1, 1999, the U.S. Fish and Wildlife Service issued PALCO an incidental take permit (TE828950-0) for 13 species.

The State-listed endangered and Federal-listed threatened marbled murrelet (*Brachyramphus marmoratus*) is one of the 13 species covered by the federal incidental take permit. Among the disturbance minimization and take avoidance measures for the marbled murrelet described in the PALCO HCP are those found in Section 6.1.2.3.5, the process known as “Prioritization and Phasing of Harvest.” This process prioritizes and phases harvest of old-growth and residual redwood stands, including higher-quality marbled murrelet habitat, in a manner that minimizes impacts to marbled murrelets.

In accordance with the prioritization and phasing process of the PALCO HCP for the harvest of marbled murrelet habitat, PALCO is proposing to harvest 11.2 acres of Type "D" of marbled murrelet habitat that are included among three timber harvesting plans (THPs).

On December 7, 2004, the Director of the Department of Fish and Game received a letter from PALCO seeking a determination pursuant to Section 2080.1 of the Fish and Game Code that Federal incidental take permit number TE828950-0 is consistent with the California Endangered Species Act (CESA) as to the harvest of the above-identified stands containing marbled murrelet habitat.

DETERMINATION

The Department has determined that incidental take permit number TE828950-0 which includes PALCO's full compliance with the terms of the HCP as a condition of authorization is consistent with CESA for the identified stands because the mitigation measures described in the HCP and associated biological opinion meet the conditions set forth in Fish and Game Code Section 2081 (b) and (c) for authorization of incidental take of species protected under CESA. Specifically, the Department finds that the potential take of marbled murrelets will be incidental to otherwise lawful activities (i.e., THPs approved by the California Department of Forestry and Fire Protection), the mitigation measures identified in the HCP and the associated biological opinion will minimize and fully mitigate the impacts of the authorized take of marbled murrelets, and the projects will not jeopardize the continued existence of the species. The mitigation measures contained within the PALCO HCP and biological opinion include but are not limited to the following:

1. The sale of the Headwaters Reserve to the State and Federal government and the sale of the Owl Creek Reserve and portions of the Grizzly Creek Complex to the State.
2. The creation of marbled murrelet conservation areas (MMCA's) which are to be managed for marbled murrelet habitat for the life of the HCP (50 years).
3. Implementation of marbled murrelet disturbance minimization measures that minimize possible disturbance and incidental take created by covered activities on PALCO lands adjacent to MMCA's and old-growth habitat in the Headwaters Reserve and State and Humboldt County parks (HCP Section 6.1.2.3.).
4. The process of prioritization and phasing of the harvest of marbled murrelet habitat in a manner which minimizes impacts to marbled murrelets (HCP Section 6.1.2.3.5).

5. PALCO's submittal to the U.S. Fish and Wildlife Service of an annual effectiveness monitoring report detailing its marbled murrelet monitoring survey locations, results, data, and analysis undertaken during the past year.
6. PALCO's contribution of \$30,000 annually for at least the first five years to the U.S. Forest Service, Northwest Forest Plan off-shore monitoring program.
7. PALCO's maintenance of a fund to conduct research regarding marbled murrelet conservation needs. PALCO will contribute \$200,000 annually for the first five years of the HCP and \$100,000 annually for the following five years to a "Marbled Murrelet Scientific Review Panel" to conduct research regarding the conservation needs of the marbled murrelet.

This determination is limited to consistency of the incidental take permit as applied to the described actions on the above-identified stands and does not cover other harvesting activities. Separate determinations or take authorizations must be obtained for such future activities that may result in take of State-listed species. Pursuant to Section 2080.1 of the Fish and Game Code, no incidental take authorization under CESA will be required for incidental take of marbled murrelets for harvest of these Type "D" stands, provided PALCO complies with the mitigation measures and other conditions described in the PALCO HCP and associated biological opinion and those required by the Federal incidental take permit. If there are any substantive changes to the project, including changes to the mitigation measures, or if the U.S. Fish and Wildlife Service amends the Federal incidental take permit, PALCO will be required to obtain a new consistency determination or CESA incidental take authorization from the Department.

DEPARTMENT OF HEALTH SERVICES

Notice is hereby given that the Drug Use Review (DUR) Board will conduct a public meeting on Tuesday, February 8, 2005 in:

Department of Health Services' Building
1501 Capitol Avenue, Room 71.4003
Sacramento, CA 95814.

AGENDA TOPICS TO INCLUDE:

1. Board Membership and By-Laws
2. New Target Drugs
3. FDB and DUR Project Updates
4. Annual Report and Board Status Discussion
5. Operational Issues and Miscellaneous Topics

Speaker Request Forms will be available at the meeting or may be obtained by contacting:

Electronic Data Systems
3215 Prospect Park Drive
Rancho Cordova, CA 95670.
916.636.1000
Attention: Jude Simon-Leack,
DUR Pharmacist Consultant

PROPOSITION 65

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)**

NOTICE TO INTERESTED PARTIES

REQUEST FOR COMMENT ON PROPOSED LISTING OF 1-HYDROXYANTHRAQUINONE AS KNOWN TO CAUSE CANCER Extension of Public Comment Period

On December 10, 2004, the Office of Environmental Health Hazard Assessment (OEHHA) published a notice in the *California Regulatory Notice Register* (Register 2004, No. 50-Z) requesting information which may be relevant to the evaluation of 1-hydroxyanthraquinone proposed for listing by operation of law based on the Labor Code Section 6382(b)(1) and (d). The comment period was scheduled to close on Monday, January 10, 2005. OEHHA has received a request to extend the comment period for the proposed listing of 1-hydroxyanthraquinone to allow for the submittal of complete and relevant information. OEHHA hereby extends the public comment period to 5 p.m., Wednesday, February 9, 2005.

Comments should be sent in triplicate, along with any supporting documentation, by mail or by fax to:

Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: coshita@oehha.ca.gov. In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on Wednesday, February 9, 2005.

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339; (916) 323-6225; FAX (916) 323-6826. Please request by OAL file number.

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW (Gov. Code Sec. 11349.3) OAL File No. 01-1118-04 S

DECISION OF DISAPPROVAL

In re:

DEPARTMENT OF FOOD AND AGRICULTURE

ACTION: Amend sections 4027 through 4027.5 and Repeal section 4027.6 of Title 4 of the California Code of Regulations

BACKGROUND

The Department proposed amendment and repeal of the above-captioned regulations in order to update the standards for electric watt-hour meters installed as sub-meters. These changes were submitted to OAL for review on November 18, 2004, and disapproved by OAL on January 3, 2004. This Decision of Disapproval explains the reason for OAL's action.

DECISION

OAL disapproved the Department's proposed amendment and repeal of regulations because the new

regulations may contain building standards that must first be reviewed and approved by the Building Standards Commission.

January 10, 2004

DAVID POTTER
Senior Counsel

for: William L. Gausewitz
Director

Original: A.G. Kawamura, Secretary

cc: Roger Macey, Branch Chief,
Division of Measurement Standards

<p>SUMMARY OF REGULATORY ACTIONS</p>

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

CA Motor Vehicle Service Information Rule

Existing section 1969 of title 13 of the California Code of Regulations requires that manufacturers of California certified 1994 and subsequent model year passenger cars, light-duty trucks, and medium duty vehicles equipped with on-board diagnostic (OBD) systems make available service information and diagnostic and reprogramming tools. This regulatory action would make changes to section 1969 including extending its requirements to manufacturers of 2007 and subsequent model year heavy-duty engines and transmissions equipped with diagnostic systems pursuant to section 1971 of title 13.

Title 13
California Code of Regulations
AMEND: 1969
Filed 01/07/05
Effective 02/06/05
Agency Contact:
Michael L. Terris (916) 327-2032

AIR RESOURCES BOARD

Vapor Recovery Systems of Dispensing Facilities

In this regulatory action, the Air Resources Board amends a regulation pertaining to the certification of

vapor recovery systems at gasoline dispensing facilities, amending a unihose dispenser requirement.

Title 17
California Code of Regulations
AMEND: 94011
Filed 01/06/05
Effective 01/06/05
Agency Contact: Kirk C. Oliver (916) 322-6533

BOARD OF EDUCATION

Special Education Mandates—Withholding Funds

The regulatory action deals with the procedures for withholding funds in order to enforce special education compliance.

Title 5
California Code of Regulations
ADOPT: 3088.1, 3088.2
Filed 01/10/05
Effective 02/09/05
Agency Contact: Debra Strain (916) 319-0641

BOARD OF EQUALIZATION

Aircraft Common Carriers

This action updates the regulation that specifies the partial exemption from Bradley-Burns uniform local sales and use tax for gross receipts from the sale of tangible personal property to common carrier operators of aircraft for use outside the county of sale, and the form for the exemption certificate used to claim the exemption.

Title 18
California Code of Regulations
AMEND: 1805
Filed 01/12/05
Effective 01/12/05
Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF EQUALIZATION

Packers, Loaders, and Shippers

The Board of Equalization is amending section 1630(b)(2)(C) to conform to those changes made in Stats. 1999, Ch. 758, to Revenue and Taxation Code section 6364(d).

Title 18
California Code of Regulations
AMEND: 1630
Filed 01/11/05
Effective 02/10/05
Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF EQUALIZATION

Taxable Sales of Food Products

The Board of Equalization is amending section 1603, title 18, California Code of Regulations, providing two editorial corrections and adding a new reference citation, Revenue and Taxation Code Section 6363.8.

Title 18
California Code of Regulations
AMEND: 1603
Filed 01/06/05
Effective 01/06/05
Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF EQUALIZATION **Foreign Consuls**

This rulemaking action conforms the California Code of Regulations to the change in policy and procedure issued by the United States Department of State, Office of Foreign Missions (OFM) for the authorization of tax exemption on vehicle purchases by all diplomatic missions and members in the United States. The new procedure provides that each purchase of a vehicle must be cleared or denied for tax exemption by the OFM, before the transaction is completed and the tax exemption is allowed.

Title 18
California Code of Regulations
AMEND: 1619
Filed 01/06/05
Effective 06/01/03
Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF FORESTRY AND FIRE PROTECTION **Forest Fire Prevention Exemption Emergency**

This emergency rulemaking would supplement the regulation that lists the types of timber operations exempt from the standard requirements to prepare and submit a harvesting plan and a completion report, and meet stocking standards after the harvest so that it will include the forest fire prevention exemption created in Public Resources Code section 4584, subdivision (k), that took effect on September 23, 2004.

Title 14
California Code of Regulations
ADOPT: 1038(i) AMEND: 1038(e)
Filed 01/07/05
Effective 01/07/05
Agency Contact:
Christopher Zimny (916) 653-9418

BOARD OF PRISON TERMS **Attempted Murder**

This filing is the readoption request for emergency regulations that dealt with the setting of a base term for each life prisoner who is found suitable for parole. (Prior OAL files 04-0504-03E and 04-0902-01EE; Board of Prison Terms File RN04-03.)

Title 15
California Code of Regulations
AMEND: 2000, 2400, 2403

Filed 01/06/05
Effective 01/11/05
Agency Contact: Kelly Winsor (916) 324-9898

DENTAL BOARD OF CALIFORNIA **Dental Corp Loan Repayment Program**

This rulemaking action implements the California Dental Corps Loan Repayment Program, Business and Professions Code sections 1970-1976. The purpose of the program is to repay student loans for dentists who commit to work in underserved communities. The regulations establish guidelines for selection of applicants, specify the information required from applicants, provide for application filing periods, set application processing times, provide for a written agreement, specify how loan repayments are to be made, specify the maximum length of absence, provide for reduction of repayments, establish a process for seeking a modification of reduction of repayments, require participating dentists to maintain a license for the duration of the program, provide for termination and repayment if the dentist does not maintain a license during the program, establish a process and penalties when a dentist is unable to complete an agreed upon obligation, and establish a process for seeking reinstatement into the program.

Title 16
California Code of Regulations
ADOPT: 1042, 1042.1, 1042.2, 1042.3, 1042.3,
1042.4, 1042.5, 1042.6
Filed 01/06/05
Effective 02/05/05
Agency Contact: Linda Madden (916) 263-2300

DEPARTMENT OF JUSTICE **Surety Bond of Motorcycle Dealer**

This is a Surety Bond form for Motorcycle Dealer, Motorcycle Lessor-Retailer, All Terrain Vehicle Dealer or Wholesale-Only Dealer (less than 25 vehicles per year). The form has been approved by the Attorney General and is being submitted for printing only.

Title 11
California Code of Regulations
ADOPT: 51.22
Filed 01/05/05
Effective 01/05/05
Agency Contact: Anne M. Burr (415) 703-1403

DEPARTMENT OF JUSTICE **Conflict of Interest Code**

This is a Conflict of Interest Code amendment that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing only.

Title 14
California Code of Regulations
ADOPT: 25201

Filed 01/11/05
 Effective 02/10/05
 Agency Contact:
 Hayley Peterson (615) 654-2540

FRANCHISE TAX BOARD

Credit for Taxes Paid to Another State

This is a nonsubstantive action making minor, editorial changes.

Title 18
 California Code of Regulations
 AMEND: 18001-1
 Filed 01/07/05
 Effective 02/06/05
 Agency Contact:
 Colleen Berwick (916) 845-3306

MANAGED RISK MEDICAL INSURANCE BOARD

AIM Infants Enrolling into Healthy Families

This action is the Certificate of Compliance filing making permanent the prior emergency adoption of the regulatory framework for the automatic enrollment of infants, born to mothers already in the Access for Infants and Mothers (AIM) program on or after July 1, 2004, into the Healthy Families Program (HFP). The prior emergency action was OAL file number 04-0624-05E.

Title 10
 California Code of Regulations
 ADOPT: 2699.6608 AMEND: 2699.100, 2699.200, 2699.201, 2699.205, 2699.209, 2699.400, 2699.401, 2699.6500, 2699.6600, 2699.6606, 2699.6607, 2699.6611, 2699.6613, 2699.6617, 2699.6619, 2699.6625, 2699.6631, 2699.6705, 2699.6715, 2699.6717, 2699.6725, 2699.
 Filed 01/07/05
 Effective 01/07/05
 Agency Contact:
 Donald G. Minnich (916) 327-7978

MEDICAL BOARD OF CALIFORNIA

Required Disclosure Language

The regulatory action specifies disclaimers and explanatory information applicable to internet postings.

Title 16
 California Code of Regulations
 ADOPT: 1355.35
 Filed 01/12/05
 Effective 02/11/05
 Agency Contact:
 Kevin A. Schunke (916) 263-2368

OFFICE OF SPILL PREVENTION AND RESPONSE

Harbor Safety Committees and Plans

The regulatory action deals with the Harbor Safety Committees and Harbor Safety Plans. Please note that the Office of Spill Prevention and Response withdrew in writing subsection (g) of section 800.6 and reserved the right to resubmit subsection (g) on, or before, October 8, 2005.

Title 14
 California Code of Regulations
 ADOPT: 800.6 AMEND: 800, 800.5, 801, 802
 Filed 01/10/05
 Effective 02/09/05
 Agency Contact:
 Joy D. Lavin-Jones (916) 327-0910

**STATE WATER RESOURCES CONTROL BOARD
 Amendment to Los Angeles Basin Plan**

This basin plan amendment adopts a Total Maximum Daily Load (TMDL) for bacteria at Los Angeles Harbor (Inner Cabrillo Beach and Main Ship Channel, including the inner Harbor). Numeric targets are expressed as days of exceedance of bacteria objectives contained in the Basin Plan. Targets are set for nonpoint sources, point sources, and for discharges from general National Pollutant Discharge Elimination System permits, general industrial storm water permits, and general construction storm water permits. The targets apply to three seasons: summer dry-weather (April 1 to October 31), winter dry-weather (November 1 to March 31, and wet weather (days with 0.1 inch or more of rain and the three days following the rain event); and to monitoring sites specified in the Basin Plan.

Title 23
 California Code of Regulations
 ADOPT: 3939.12
 Filed 01/05/05
 Effective 01/05/05
 Agency Contact: Greg Frantz (916) 341-5553

**CCR CHANGES FILED WITH THE
 SECRETARY OF STATE
 WITHIN AUGUST 25, 2004
 TO JANUARY 12, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the

CALIFORNIA REGULATORY NOTICE REGISTER 2005, VOLUME NO. 3-Z

Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

10/13/04 ADOPT: 1015, 1019, 1048, 1050
AMEND: 1000, 1002, 1004, 1006, 1008,
1012, 1014, 1016, 1018, 1020, 1022,
1024, 1026, 1027, 1028, 1030, 1032,
1034, 1038, 1040, 1042, 1044, 1046

Title 2

01/04/05 AMEND: 18703.4, 18730, 18940.2,
18942.1, 18943
01/03/05 ADOPT: Division 8, Chapter 108, Sec-
tion 59530.
12/31/04 AMEND: 18545
12/31/04 ADOPT: 18229
12/20/04 ADOPT: 1859.71, 1859.78.1 AMEND:
1859.2, 1859.73.2, 1859.79.2, 1859.82,
1859.83
12/16/04 ADOPT: 1859.51.1, 1859.70.2 AMEND:
1859.2, 1859.51, 1859.70, 1859.103,
12/06/04 AMEND: 1859.2, 1859.51
11/30/04 AMEND: Div. 8, Ch. 29, Sec. 50000
11/24/04 AMEND: 1866, 1866.1, 1866.2, 1866.4,
1866.4.1, 1866.4.2, 1866.4.3, 1866.5,
1866.5.1, 1866.7, 1866.13
11/22/04 AMEND: 58700
11/18/04 AMEND: 561, 561.1, 561.2, 561.4, 561.5,
561.6, 561.7, 561.8, 561.9, 561.10,
561.11, 561.12, 561.13, 561.14
11/10/04 ADOPT: 1859.163.1, 1859.163.2,
1859.163.3, 1859.164.2, 1859.167.1
AMEND: 1859.2, 1859.145, 1859.145.1,
189.160, 1859.161, 1859.162, 1859.163,
1859.164, 1859.164.1, 1859.165,
1859.166, 1859.167, 1859.168, 1859.171
11/09/04 AMEND: 18530.8
11/04/04 AMEND: 1859.71.2, 1859.78.4
11/02/04 AMEND: 1859.51, 1859.105
11/02/04 ADOPT: 1859.123.1 AMEND: 1859.2,
1859.73.1, 1859.81, 1859.83, 1859.90,
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10/26/04 ADOPT: 18361.1, 18361.2, 18361.3,
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18747, 18754, 18951 REPEAL: 18361
09/29/04 ADOPT: 20107
09/23/04 AMEND: 18401, 18421.1
09/23/04 ADOPT: 588, 588.1, 588.2, 588.3, 588.4,
588.5, 588.6, 588.7, 588.8, 588.9,
5881.10

09/15/04 ADOPT: 599.511 AMEND: 599.500(t)
09/10/04 AMEND: 54300
09/09/04 AMEND: 18704.2
08/31/04 ADOPT: 599.517

Title 3

12/20/04 REPEAL: 305, 306
11/29/04 AMEND: 3423(b)
11/17/04 AMEND: 1703.3
11/16/04 AMEND: Subchapter 1.1
11/10/04 AMEND: 3601(g)
11/03/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,
6784 AMEND: 6000, REPEAL: 6450,
6450.1, 6450.2, 6250.3, 6784
10/25/04 AMEND: 3700(c)
10/14/04 AMEND: 3423(b)
10/13/04 AMEND: 3700(b)
10/06/04 ADOPT: 2042, 2100, 2101, 2102
10/06/04 AMEND: 3877(a), 3883, 3885(a)(b),
4603(f) REPEAL: 3902
10/04/04 AMEND: 1280.2
09/22/04 AMEND: 3430(b)
09/20/04 AMEND: 3700
09/09/04 AMEND: 6502
09/08/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,
6784 AMEND: 6000 REPEAL: 6450,
6450.1, 6450.2, 6450.3, 6784
09/08/04 AMEND: 3423(b)
09/02/04 AMEND: 3700(b)(c)

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12/23/04 ADOPT: 10163, 10164 AMEND: 10152,
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12/20/04 ADOPT: 12200, 12200.1, 12200.3,
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12200.10A, 12200.10B, 12200.10C,
12200.11, 12200.13, 12200.14, 12200.15,
12200.16, 12200.17, 12200.18, 12200.20,
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12/16/04 ADOPT: 10300, 10301, 10302, 10303,
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12/16/04 ADOPT: 144
11/29/04 AMEND: 1846.5
11/23/04 ADOPT: 2444 AMEND: 2241, 2242,
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11/08/04 ADOPT: 12360, 12370
10/18/04 ADOPT: 12270, 12271, 12272

10/14/04 AMEND: 1402, 1471, 2056, 2101, 2102, 2103
 10/13/04 AMEND: 1371
 09/23/04 ADOPT: 144
 09/20/04 AMEND: 12101, 12122, 12250

Title 5

01/10/05 ADOPT: 3088.1, 3088.2
 12/08/04 ADOPT: 9517.1 AMEND: 9515, 9517
 11/16/04 ADOPT: 80089.3, 80089.4
 11/15/04 ADOPT: 6116, 6126 AMEND: 6100, 6115, 6125
 11/09/04 ADOPT: 14105
 11/04/04 AMEND: 11981, 11985
 11/02/04 AMEND: 58311, 58316
 09/30/04 ADOPT: 19814.1, 19832, 19833, 19834, 19835, 19837, 19837 AMEND: 19814
 09/22/04 AMEND: 11530
 09/14/04 AMEND: 58310, 58312, 58314
 09/08/04 ADOPT: 58139
 09/03/04 AMEND: 40000, 40050, 40650, 40900, 41302, 41304, 41901.5, 42501, 43000
 09/02/04 ADOPT: 40402.1, 40405, 40405.1, 40405.2, 40405.3, 40405.4, 40901, 41301, 41906, 41910, and 42728. AMEND: 40500, 40501, 40503, 40505, 40506, 41600, 41601, 42395, 42705, 43600, 43601, 43602, 43603, 43604, 43660, 43661, 43662, 43663, 43664, 43665, 43666

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12/06/04 AMEND: 213, 218

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12/31/04 ADOPT: 9785.4, AMEND: 9725, 9726, 9727, 9785, 9785.2, 9785.3, 9805, 10150, 10152, 10156, 10158, 10160, 10163, 10165.5 REPEAL: 10151, 10154
 12/31/04 ADOPT: 9768.1, 9768.2, 9768.3, 9768.4, 9768.5, 9768.6, 9768.7, 9768.8, 9768.9, 9768.10, 9768.11, 9768.12, 9768.13, 9768.14, 9768.15, 9768.16, 9768.17
 12/30/04 AMEND: 3380(d)
 12/27/04 ADOPT: 32032, 32033, 32034, 32035, 81000, 81005, 81010, 81020, 81030, 81040, 81050, 81055, 81060, 81065, 81070, 81075, 81080, 81090, 81100, 81105, 81110, 81115, 81120, 81125, 81130, 81135, 81140, 81145, 81150, 81155, 81160, 81165, 81170, 81175, 81180,
 12/15/04 AMEND: 9789.11
 12/15/04 ADOPT: 9788.01, 9788.1, 9788.11, 9788.2, 9788.3, 9788.31, 9788.32, 9788.4, 9788.45, 9788.5, 9788.6, 9788.7, 9788.8, 9788.9, 9788.91

12/09/04 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9, 9792.10, 9792.11 REPEAL: 9792.6
 12/08/04 AMEND: 1602(a)
 12/08/04 AMEND: 3210, 3212
 12/07/04 AMEND: 3314
 11/09/04 AMEND: 6777
 11/03/04 AMEND: 1541(I)(1)
 11/03/04 AMEND: 15220, 15220.1, 15220.3, 15220.4
 11/01/04 ADOPT: 9767.1, 9767.2, 9767.3, 9767.4, 9767.5, 9767.6, 9767.7, 9767.8, 9767.9, 9767.10, 9767.11, 9767.12, 9767.13, 9767.14
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 10/07/04 AMEND: 5144
 10/07/04 AMEND: 3456
 10/06/04 AMEND: 344.30
 10/04/04 AMEND: 5155
 10/04/04 ADOPT: 10202, 10102.1, 10203.1, 10203.2 AMEND: 10200, 10201, 10203, 10204
 10/01/04 ADOPT: 3241.1
 10/01/04 AMEND: 5155
 09/30/04 AMEND: 3381
 08/30/04 ADOPT: 32032, 32033, 32034, 32035, 81000, 81005, 81010, 81020, 81030, 81040, 81050, 81055, 81060, 81065, 81070, 81075, 81080, 81090, 81100, 81105, 81110, 81115, 81120, 81125, 81130, 81135, 81140, 81145, 81150, 81155, 81160, 81165, 81170, 81175, 81180,
 08/27/04 AMEND: 3657
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12/06/04 ADOPT: 9805, 9868 AMEND: 9801, 9801.5, 9804, 9812, 9820, 9824, 9848, 9867, 9878
 10/28/04 AMEND: 9525
 09/01/04 ADOPT: 9807, 9822, 9834, 9836 AMEND: 9800, 9802, 9878 REPEAL: 9830, 9834, 9836

Title 10

01/07/05 ADOPT: 2699.6608 AMEND: 2699.100, 2699.200, 2699.201, 2699.205, 2699.209, 2699.400, 2699.401, 2699.6500, 2699.6600, 2699.6606, 2699.6607, 2699.6611, 2699.6613, 2699.6617, 2699.6619, 2699.6625, 2699.6631, 2699.6705, 2699.6715, 2699.6717, 2699.6725, 2699.

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12/22/04 AMEND: 2498.5

12/22/04 AMEND: 2498.4.9, 2498.5

12/21/04 AMEND: 2498.4.9, 2498.5

12/21/04 AMEND: 2498.4.9, 2498.5

12/21/04 AMEND: 2498.4.9, 2498.5

12/17/04 ADOPT: 2194., 2194.1, 2194.2, 2194.3, 2194.4, 2194.5, 2194.6, 2194.7, 2194.8

11/19/04 ADOPT: 2361

10/27/04 AMEND: 260.102.14

10/26/04 AMEND: 2498.4.9, 2498.5

10/04/04 AMEND: 2632.13(e)

09/22/04 AMEND: 2731

09/16/04 AMEND: 2318.6, 2353.1

09/15/04 AMEND: 2695.8(b)

09/01/04 AMEND: 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2697.37, 2698.38, 2698.39, 2698.40, 2698.41, 2698.42

08/31/04 ADOPT: 2698.95

08/26/04 AMEND: 2498.3

08/26/04 AMEND: 2498.5

08/26/04 AMEND: 2498.5

08/25/04 ADOPT: 2498.4.9 REPEAL: 2400, 2401, 2403, 2404, 2405, 2406, 2407, 2408, 2420, 2421, 2421.1a, 2421.2, 2421.3, 2421.4, 2421.5, 2421.6, 2421.8, 2421.9, 2421.10, 2422, 2430, 2431, 2431.1, 2431.2, 2431.3, 2432, 2441, 2442, 2443, 2443.1, 2444, 2444.5, 2444.6

Title 11

01/05/05 ADOPT: 51.22

01/03/05 AMEND: 51.17

01/03/05 AMEND: 26.4

12/07/04 AMEND: 51.16

11/01/04 ADOPT: 4001, 4002, 4003, 4004, 4005, 4006 AMEND: 984.1

10/19/04 ADOPT: 2037, 2038 AMEND: 2010, 2037, 2050

08/26/04 AMEND: 1005, 1007, 1008, 1018

Title 12

10/08/04 AMEND: 503(f)

Title 13

01/07/05 AMEND: 1969

01/04/05 AMEND: 553.70

12/28/04 AMEND: 1

12/27/04 ADOPT: 150.06

12/27/04 ADOPT: 1971

12/23/04 AMEND: 1151.1, 1151.2, 1151.3, 1151.4, 1151.5, 1151.5.6, 1151.7, 1151.8, 1151.8.4, 1151.9, 1151.9.1, 1151.10, 1152.2, 1152.3, 1152.4, 1152.4.1, 1152.6, 1152.7, 1152.7.1, 1152.8

12/22/04 ADOPT: 151.00

12/16/04 AMEND: 2284

12/15/04 ADOPT: 154.00

12/09/04 ADOPT: 423.00

12/02/04 ADOPT: 120.01 AMEND: 120.00, 120.02, 120.04

12/02/04 AMEND: 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2709

11/10/04 ADOPT: 2477

10/28/04 ADOPT: 1230.5

10/25/04 AMEND: 190.32, 190.34, 190.36, 190.38

09/09/04 ADOPT: 15.07

09/02/04 ADOPT: 155.05 AMEND: 155.00, 155.02, 155.04, 155.08, 155.10 REPEAL: 155.06

Title 14

01/11/05 ADOPT: 25201

01/10/05 ADOPT: 800.6 AMEND: 800, 800.5, 801, 802

01/07/05 ADOPT: 1038(i) AMEND: 1038(e)

12/27/04 AMEND: 1.91, 27.60, 27.65, 27.82, 27.83, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90

12/27/04 ADOPT: 10280, 10281, 10282, 10283, 10284, 10285, 10286, 10287, 10288, 10289 REPEAL: 11325

12/22/04 ADOPT: 18456.2.1, 18460.2.1 AMEND: 18449, 18450, 18451, 18456, 18459, 18459.1, 18459.2.1, 18459.3, 18461, 18462

12/21/04 AMEND: 7.50(b)(180)

12/21/04 AMEND: 851.50, 851.51, 851.51.1, 851.54

12/13/04 AMEND: 180.1, 108.3

12/13/04 ADOPT: 18660.5, 18660.6, 18660.7, 18660.8, 18660.9, 18660.10, 18660.11, 18660.12, 18660.13, 18660.14, 18660.15, 18660.16, 18660.17, 18660.18, 18660.19, 18660.20, 18660.21, 18660.22, 18660.23, 18660.24, 18660.25, 18660.30, 18660.31, 18660.32, 18660.33, 1

12/07/04 AMEND: 195

11/22/04 AMEND: 670.5

11/10/04 AMEND: 630
 11/08/04 ADOPT: 5.26 AMEND: 4.15, 5.25
 11/08/04 ADOPT: 3696.5
 11/04/04 AMEND: 502
 11/04/04 AMEND: 550, 551, 552
 11/03/04 AMEND: 163, 164
 11/02/04 AMEND: 2525
 10/28/04 AMEND: 912.9, 932.9, 952.9
 10/21/04 AMEND: 300, 600
 10/18/04 AMEND: 1682, 1682.1, 1683, 1683.1, 1683.6 REPEAL: 1681.2, 1681.3, 1681.2, 1681.3
 10/14/04 AMEND: 10610(e) Appendix M and Appendix N
 10/12/04 ADOPT: 1052.4 AMEND: 895.1, 1052, 1052.1
 10/07/04 AMEND: 851.1
 09/27/04 AMEND: 851.23
 09/22/04 AMEND: 1.74
 09/21/04 AMEND: 507.1
 09/09/04 AMEND: 27.60, 27.65, 27.82, 28.27
 09/07/04 ADOPT: 17913.5 AMEND: 17901, 17902, 17905, 17910, 17911, 17913, 17914, 17914.5
 09/07/04 ADOPT: 15333, Appendix L AMEND: 15023, 15062, 15064, 15065, 15075, 15082, 15085, 15087, 15088, 15088.5, 15094, 15097, 15126.4, 15205, 15206, 15252, 15313, 15325, 15330, 15333, 15378, Appendices C, D
 09/01/04 AMEND: 671

Title 15

01/06/05 AMEND: 2000, 2400, 2403
 12/30/04 AMEND: 3097
 12/29/04 ADOPT: 3000 AMEND: 3005, 3044, 3062, 3313, 3314, 3315, 3323, 3376 REPEAL: 3045.1
 12/27/04 ADOPT: 2251.5 AMEND: 2041, 2072, 2073, 2074 REPEAL: 2050, 2051, 2052, 2054, 2055, 2056, 2701
 12/14/04 ADOPT: 3194, 3195 AMEND: 3006, 3044, 3092, 3100, 3101, 3107, 3138, 3161, 3190, 3191, 3192, 3193 REPEAL: 3044, 3092, 3138, 3190
 12/09/04 AMEND: 2253
 11/05/04 ADOPT: 1059
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 09/13/04 AMEND: 200, 2400, 2403
 08/30/04 ADOPT: 2251.5 AMEND: 2005, 2057, 2072, 2073, 2074 REPEAL: 2050, 2051, 2052, 2054, 2055, 2056

Title 16

01/12/05 ADOPT: 1355.35
 01/06/05 ADOPT: 1042, 1042.1, 1042.2, 1042.3, 1042.3, 1042.4, 1042.5, 1042.6
 12/29/04 AMEND: 2526, 2529, 2532, 2533, 2534, 2581, 2584, 2586, 2587, 2588, 2588.1
 12/22/04 AMEND: 1536
 12/20/04 ADOPT: 4123
 12/20/04 AMEND: 1567, 1568, 1569
 12/17/04 AMEND: 1397.60
 12/16/04 ADOPT: 1387.6, 1387.7, 1389.1, 1390.1, 1390.2, 1390.3, 1390 AMEND: 1387, 1387.1, 1387.2, 1387.3, 1387.4, 1387.5, 1391.3, 1391.4, 1391.5, 1391.8, 1391.10, 1391.11 REPEAL: 1390
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